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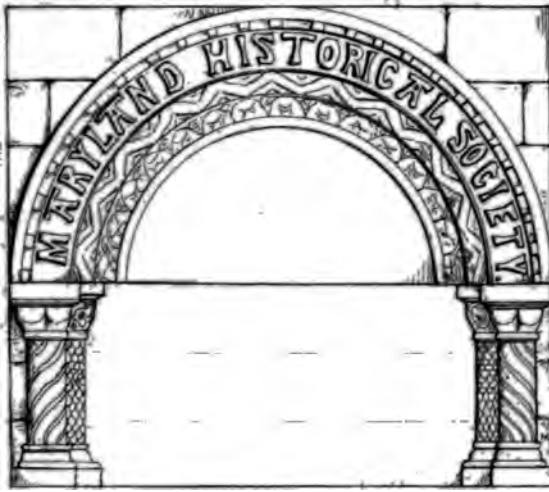
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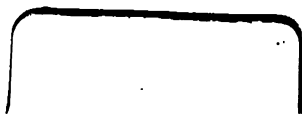
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**REPORTS OF COMMITTEES**  
**OF**  
**THE HOUSE OF REPRESENTATIVES,**

**MADE DURING THE**

**FIRST SESSION OF THE THIRTY-THIRD CONGRESS,**

**PRINTED**

**BY ORDER OF THE HOUSE OF REPRESENTATIVES.**

**IN THREE VOLUMES.**

---

**WASHINGTON:**  
**A. O. P. NICHOLSON, PRINTER.**  
**1854.**





# INDEX

TO

## REPORTS OF COMMITTEES

OF THE

### HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

THIRTY-THIRD CONGRESS, FIRST SESSION.



#### THREE VOLUMES.

Volume 1.....	No. 1 to 121
Volume 2.....	No. 122 to 266
Volume 3.....	No. 267 to 372

#### A.

##### *Reports made by—*

	Vol.	No.
Mr. J. C. Allen, on case of the heirs of Preeley Thornton.....	3	370
Mr. Ashe, on case of Lieutenant J. C. Carter.....	3	362
on case of Charles J. Porcher.....	3	363
on case of Lewis E. Simonds.....	2	228

##### *Subjects of reports.*

Adams, Isaac.....	3	277
Aiken, Julia.....	3	280
Alabama, land for Coosa and Tennessee River Railroad.....	1	68
Alexander, General William, William A. Duer, John Duer, and Bev. Robinson, trustees of.....	2	240
Allen, Wade.....	2	136
Allyn, Captain Francis.....	1	35
Alteration of House bill No. 343 (Minnesota railroad bill).....	3	352
American seamen, (prisoners in 1812,) compensation and bounty land to.....	3	344
Anderson, Colonel John, legal representatives of.....	3	336
Anderson, L. J., petition of, for the heirs of Joseph Wheaton.....	1	90
Angus, Anne W., widow of Captain Samuel Angus.....	2	159
Appropriation to supply deficiencies for the fiscal year ending June 30, 1854, (Senate amendments.).....	2	132
Appropriations for the Indians, (Senate amendments).....	2	201
Armories, national, at Harper's Ferry and Springfield, to restore civil super- intendency.....	2	191
Atlantic Mutual Insurance Company.....	1	36
Asman, Abraham.....	2	166
Ayres, Achaa.....	3	372
Ayres, Joseph.....	1	53

## INDEX.

## B.

*Reports made by—*

	Vol.	No.
Mr. Ball, on case of Moses D. Hogan.....	2	152
Mr. Benton, on case of John S. and William H. Russell.....	1	59
on case of Don Juan Jesus Vigil.....	2	200
Mr. Boyce, on case of heirs of Anthony Gales.....	1	19
on case of Job M. Layton.....	1	20
Mr. Breckenridge, alteration of House bill No. 312 (Minnesota railroad).....	3	352
Mr. Bridges, on case of Isaac Adams.....	3	277
on case of Francis Pettit Smith.....	2	166

*Subjects of reports.*

Babb, Libeas H.....	1	100
Babcock, Robert.....	2	264
Baggerly, Rebecca, widow of David Baggerly.....	2	224
Baker, Grafton.....	1	81
Baker, Jacob.....	3	345
Ball, John T.....	1	119
Barr & Coale.....	3	299
Bates, Lincoln.....	3	287
Bayly, Thomas H.....	3	354
Beaugrand, Isadore D.....	3	361
Bedinger, Daniel, heirs of.....	1	105
Beebe, Elijah, widow and heirs of.....	1	2
Bently, George M.....	2	128
Berger, Edmund.....	3	366
Bishop, George G., and legal representatives of John Arnold.....	1	17
Bispham, John E.....	1	39
Black, Bethiah.....	2	266
Black Hawk war, claims in.....	2	179
Blake, William.....	1	10
Blakeney, Mary, widow.....	1	181
Blaney, Mary E. D., widow of Major George Blaney.....	3	333
Bogert and Kneeland, <i>et als</i> .....	1	18
Bogy, Joseph, and P. Menard, heir-at-law of Joseph Placy.....	2	233
Books ordered by Congress.....	2	186
Bounty land and compensation to certain American seamen.....	3	344
Bowman, Isaac, executor of.....	1	106
Bowman, Isaac S., executor of Isaac Bowman.....	3	275
Boyd, Mary, widow of John Boyd.....	2	234
Brady, Samuel W.....	1	31
Branham, Benjamin O.....	1	76
Bronough, Thomas.....	2	163
Brow, Henry K.....	3	271
Brown, Oliver.....	2	154
Brown, Pamela, widow of Major General Jacob Brown.....	1	43
Brown, William.....	3	330
Bryan, John A.....	3	302
Buckles, J. C.....	2	129
Buckner, Simeon, widow of.....	2	222
Burgess, Charles J.....	3	270
Burnham, Captain John, heirs of.....	3	305
Butler, James.....	2	157

## C.

*Reports made by—*

Mr. Campbell—alteration of House bill No. 342, (Minnesota railroad).....	3	352
interpolation of joint resolution fixing the compensation of the employés of the legislative department of the government....	3	351
Mr. Chandler, on case of Bogert & Kneeland, <i>et al</i> .....	1	18
books ordered by Congress.....	2	186
on case of Captain E. A. F. Lavallette.....	1	98

# INDEX.

5

	Vol.	No.
Mr. Chandler, on case of legal representatives of Richard W. Meade.....	1	5
on case of Titian R. Peale.....	2	167
rescue of the steamship "San Francisco".....	1	113
Mr. Chrisman, on case of Albra Tripp.....	1	115
Mr. Cobb—homestead to actual settlers.....	1	34
grant of land to the Coosa and Tennessee River railroad.....	1	62
reduction of the price of the public lands.....	1	33
Mr. Corwin, on case of the heirs of Baron De Kalb.....	1	93
on case of William A. and John Duer and Bev. Robinson, trustees of the estate of General William Alexander.....	2	240
on case of Rignald, <i>alias</i> Nick Hillery.....	3	340
on case of the executor of Thomas Underhill.....	2	203
Mr. Crocker, on case of the heirs of Lott Hall.....	2	148
on case of legal representatives of Henry Hoffman.....	2	149
Mr. C. B. Curtis, on case of Oliver Lee.....	1	86

## *Subjects of reports.*

California Indians, schools for the e'ucation of.....	3	267
California, payment of moneys collected as revenue into the treasury of.....	2	168
California, private land claims in .....	1	70
California, refunding of moneys for suppressing Indian aggressions in.....	2	137
Call, Ira.....	2	230
Cameron, John W.....	1	77
Capen, James.....	2	225
Capitol, stonecutters on extension of.....	3	306
Carroll, Charles W.....	2	253
Carter, Lieutenant J. C.....	3	362
Carver, Polly.....	3	301
Case, William.....	3	359
Cash, D. C. and Giles U. Ellis.....	1	41
"Casket," owners of brig.....	2	188
Caxillo, Rosalie.....	2	216
Cayuse war in Oregon, expenses of.....	2	122
Chamberlain, Captain Joshua, heirs of .....	3	349
Champion, Silas.....	1	67
Chaplains in Congress, and in the army and navy.....	2	124
Chapman, Ezra, widow and children of.....	2	146
Cherokee Indians .....	2	123
Chesley, Sarah.....	2	180
Chittenden, Heman.....	3	299
Christy, Charles.....	3	279
Civil township of Marion, Mercer county, Ohio.....	2	246
Claffin, George S.....	1	27
Claims in Black Hawk war.....	2	179
Claims of the State of Maryland.....	3	279
Clark, Ferdinand.....	1	19
Clendenin, John G., John Frazer, and the administrator of.....	2	238
Clifton, Andrew J.....	1	114
Cline, Anthony, Charles Winter, and others.....	3	311
Coale & Barr.....	3	299
Coffey, Cornelius.....	2	249
Cole, John.....	2	255
Colmesnil, John D.....	2	142
Colt's patent, extension of.....	3	353
Colt, Samuel.....	1	6
Compensation and bounty land to certain American seamen.....	3	344
Compensation of the employees of the legislative department of the government, interpolation of joint resolution for.....	3	351
Consular and diplomatic system.....	3	348
Contested election, New Mexico.....	1	121
Cody, Susan, and others.....	3	367
Cook, Anna E., widow of Anson J. Cook.....	2	164
Cook, Benjamin C.....	2	217
Cook, Lyman N.....	1	44
Coosa and Tennessee River railroad, land for.....	1	62
Copeland, Thomas.....	1	54

	Vol.	No.
Coyle, Randolph, and John Delafield—unsold lands in Symmes's purchase.....	2	243
Cozzens, William B.....	1	56
Cribben, Lawrence, William J. McElhiney, and E. P. Matthews.....	2	220
Culver, Sylvanus.....	2	205
Curran, William.....	2	213
Cushing, Mary H.....	2	242

## D.

*Reports made by—*

Mr. J. G. Davis, on case of John C. Fr. Salomon.....	2	174
on case of Wm. Wheatley.....	1	94
Mr. Dent, on case of Libeas H. Babb.....	1	100
on case of Benjamin O. Branham.....	1	76
on case of Oliver Brown.....	2	154
on case of John W. Cameron.....	1	77
on case of Silas Champion.....	1	67
on case of Leeman Gibbs.....	1	99
on case of Robert Ham.....	1	78
on case of Mary A. M. Jones, widow of Gen. Roger Jones.....	2	190
on case of Edmund Mitchell.....	2	155
on case of Captain Thomas Porter.....	1	104
on case of Edmund P. Stedman.....	1	75
on case of G. W. Torrance.....	2	156
on case of David Towle.....	1	103
on case of James K. Welch.....	1	102
Mr. Disney, indigent insane.....	2	125
Mr. Drum, on case of the widow and children of Ezra Chapman.....	2	146
on case of Charles J. Davis, administrator of Captain John Davis...	2	173
on case of Wm. V. Heard, heir of General John Heard.....	2	177
on case of heirs of Captain Matthew Jack.....	2	145
on case of the heirs of Joseph Savage.....	2	147
on case of the heirs of Captain Nehemiah Stokeley.....	2	144
on case of legal representatives of Captain Tarpley White.....	2	176

*Subjects of reports.*

Dartmoor and other prisoners in 1812, compensation and bounty land to.....	3	344
Davis, Charles J., administrator of Captain John Davis.....	2	173
Davis, Lot.....	3	365
Deany, Mary, widow of Lieutenant James A. Deany.....	1	82
Deficiency bill, Senate's amendments to.....	2	132
De Kalb, Baron, heirs of.....	1	93
Delafield, John, and E. Coyle, unsold lands in Symmes's purchase.....	2	243
Delaware, trade between the United States and the republic of Peru.....	3	347
Devlin, John.....	3	312
Diplomatic and consular system.....	3	348
Dorsey, Lloyd, and others.....	3	303
Dousman, Hercules L.....	1	71
Duckett, James M.....	1	57

## E.

*Reports made by—*

Mr. Eastman, on case of the widow and heirs of Elijah Beebe.....	1	2
on case of Robert Grignon.....	1	15
Mr. Eddy, on case of Isaac S. Bowman, executor of Isaac Bowman.....	3	275
Mr. Edgerton, on case of legal representatives of Colonel John Anderson.....	3	336
on case of Mary E. D. Blaney.....	3	333
on case of William Brown.....	3	330
on case of John A. Bryan.....	3	302
on case of the heirs of Captain John Burnham.....	3	305
on case of Polly Carver.....	3	301
on case of Andrew J. Clifton.....	1	114

# INDEX.

7

	Vol.	No.
<b>Mr. Edgerton, on case of Coale &amp; Barr.....</b>	3	299
on case of Thomas Copeland.....	1	54
on case of Wm. B. Cozzens.....	1	56
on case of John Devlin.....	3	312
on case of James M. Duckett.....	1	57
on case of Captain Henry Eagle.....	3	329
on case of John S. Gatewood.....	3	309
on case of Jacob Gideon.....	3	313
on case of Eunice Gilbert.....	1	55
on case of Christopher Gill.....	3	324
on case of Gray, McMurdo & Co.....	1	51
on case of Edward H. Herbert.....	3	331
on case of widow and heirs of John Hogan.....	3	310
on case of Robert Lanham.....	3	327
on case of legal representatives of Daniel Loomis.....	3	337
on case of James Mackall.....	3	308
on case of John McAvoy.....	3	316
on case of John P. McElderry.....	3	339
on case of Hezekiah Miller.....	3	335
on case of Jonas W. Nye.....	3	326
on case of Andrew H. Patterson.....	3	300
on case of John Robinson.....	3	332
on case of Priscilla C. Simonds.....	1	118
on case of Wm. G. Smith.....	3	322
stonecutters on the extension of the Capitol.....	3	306
on case of Dr. S. A. Thompson.....	3	307
on case of Utica Steam Woolen Company.....	1	50
on case of Rulif Van Brunt.....	3	334
on case of James Van Horn.....	3	328
on case of William G. Williams.....	3	315
on case of Lieutenant A. J. Williamson.....	3	338
on case of the sureties of Daniel Winalow.....	3	314
on case of Charles Winter and others.....	3	311
<b>Mr. Edmonds, on case of Julia Aiken.....</b>	3	280
on case of Abraham Ausman.....	2	165
on case of Samuel W. Brady.....	1	31
on case of Thomas Bronough.....	2	163
on case of Anna E. Cook.....	2	164
on case of Lot Davis.....	3	365
on case of Thomas Fraser.....	1	29
on case of Jephtha L. Heminger.....	3	364
on case of Cornelius H. Latham.....	1	30
on case of Asa Leach.....	3	320
on case of Joseph McMinn.....	3	319
on case of George J. Rallston.....	3	318
on case of Zebina Rawson.....	3	296
widows' pensions.....	1	101
<b>Mr. Edmundson, on case of James Capen.....</b>	2	225
on case of Catharine Hall and Caroline Gyzdaar, children of Robert McNeill.....	2	237
on case of Samuel Ross.....	2	236
on case of Martha Scott, widow of Samuel Scott.....	2	235
<b>Mr. T. D. Eliot—extension of Colt's patent.....</b>	3	353
<b>Mr. Ellison, on case of Mary Blakeney.....</b>	2	181
on case of Sarah Chesley.....	2	180
on case of Joel Kelsey.....	2	298
<b>Mr. English, on Nebraska and Kansas bill—minority report.....</b>	1	80
<b>Mr. Etheridge—third regiment Missouri volunteers.....</b>	2	194
on case of Charles H. Wilgus.....	2	195

## Subjects of reports.

<b>Eagle, Captain Henry.....</b>	3	329
<b>Edwards, William B.....</b>	1	47
<b>Elliott, George.....</b>	2	260
<b>Elliott, Theodore E.....</b>	3	342

	Vol.	No.
Ellis, Giles U., and D. C. Cash.....	1	41
Ellis, Thomas.....	2	161
Employés of the legislative department of the government, interpolation of joint resolution fixing the compensation of.....	3	351
Estes, James B.....	2	185
Evans, N. G.....	2	245
Extension of the Capitol, stonecutters on.....	3	306
Expenses of the Cayuse war, Oregon.....	2	122

## F.

*Reports made by—*

Mr. Faulkner, on case of Henry K. Brow.....	3	271
on case of Charles J. Burgess.....	3	270
on case of Cornelius Coffey.....	2	249
on case of N. G. Evans.....	2	245
on case of Captain H. B. Field.....	1	52
on case of the heirs of James Greer.....	2	250
on case of Francis M. Gwinn.....	2	254
on case of William Hankins.....	1	65
on case of Eleanor Hoople.....	2	252
on case of Charles Lee Jones.....	1	7
on case of Thomas Jordan.....	3	290
on case of John H. King.....	2	251
on case of John H. King.....	3	272
on case of Samuel M. Latimer.....	3	268
on case of Helen Mackay, widow and administratrix of Lieutenant Colonel Aeneas Mackay.....	2	241
change of site of the Military Asylum at Washington.....	3	274
military post near Pembina river, Minnesota.....	3	291
memorial of the legislative council of New Mexico in reference to Fort Atkinson.....	2	223
on case of Russell Rice.....	3	269
on case of Edward B. Shelton.....	3	273
on case of Wm. H. Weirick.....	2	248
on case of Lewis B. Willis.....	1	1
Mr. Fenton—remittance of duties on goods destroyed by fire in New York and San Francisco.....	2	202
Mr. Flagler, on case of Sarah Liscomb, widow of Darius Liscomb.....	1	91
on case of Esther Lovejoy.....	3	371
on case of Enoch Perkins, heir of Zophar Perkins.....	1	88
on case of the heirs of Joseph Wheaton, on petition of L. J. An- derson.....	1	90
on case of Ira Whitaker.....	1	80
on case of William Woodbury.....	1	87
Mr. Fuller, on case of Ferdinand Clark.....	1	12
on case of Adolphus Meier & Co.....	1	13
on case of Wilson & Brothers.....	1	14

*Subjects of reports.*

Factor, Wm. Senna.....	2	140
Faulkner, Betsey A., daughter of Ebenezer Floyd.....	2	265
Faulkner, Jesse R.....	2	112
Field, Captain H. B.....	1	52
Field, Richard, Susan Coody, and others.....	3	367
Finley, Lieutenant Andrew, heirs of.....	3	284
Fort Atkinson, memorial of the Legislative Council of New Mexico in refer- ence to.....	2	223
Fraser, John, and the administrator of John G. Clendenin.....	2	232
Fraser, Thomas.....	1	29
Frémont, John Charles.....	3	269
Frink, John.....	3	343

# INDEX.

9

## G.

### Reports made by—

	Vol.	No.
Mr. Giddings, on case of Captain Francis Allyn.....	1	35
Mr. Greenwood, on case of Charles Christy.....	3	279
on case of Susan Coody and others.....	3	367
on case of William Senna Factor.....	2	140
on case of John Johnson.....	2	178
Mr. Gray, on case of J. C. Buckles.....	2	129
on case of McAtee & Eastman.....	2	130
Mr. Frow—Cherokee Indians.....	2	123

### Subjects of reports.

Gale, Anthony, heirs of.....	1	19
Gallegos, José Manuel, contested election in New Mexico.....	1	121
Gardner, Henry, and others, directors of the New England Mississippi Land Company.....	2	209
Gardiner & Mears.....	3	369
Gass, Patrick.....	2	215
Gatewood, John S.....	3	309
"General Armstrong," owners of brig.....	2	139
Georgia Railroad and Banking Companies and West Feliciana railroad.....	3	368
Gerard Joseph, heirs of.....	1	32
Gibbs, Leeman.....	1	99
Gibson, George W.....	1	63
Gideon, Jacob.....	3	313
Gilbert, Eunice.....	1	55
Gill, Christopher.....	3	324
Goddard, Nathaniel, and others.....	2	172
Gove, William.....	3	293
Grafton, Joshua C., Charles Winter, and others.....	3	311
Graham & Finnall.....	2	131
Graham, Robert.....	2	134
Gray, McMurdo, & Company.....	1	51
Green, James F.....	1	98
Greene, General Nathaniel, heirs of.....	3	283
Greer, James, heirs of.....	2	250
Grignon, Charles A.....	2	197
Grignon, Robert.....	1	15
Gwin, Francis M.....	2	254
Gyzdaar, Caroline, and Catharine Hall, children of Robert McNeill.....	2	237

## H.

### Reports made by—

Mr. Hamilton, on case of William G. Howison.....	2	143
Mr. A. Harlan, on case of the owners of brig "Kate Boyd".....	2	141
Mr. S. W. Harris, on case of Mrs. Frances A. McCauley.....	1	95
Mr. Haven—payment of moneys into the treasury of California.....	2	163
Mr. Hendricks, on case of George M. Bentley.....	2	128
on case of William Blake.....	1	10
on case of Pamela Brown.....	1	43
on case of Henry N. Halsted.....	1	21
on case of Benjamin Hammond.....	1	23
on case of Hezekiah Johnson.....	1	73
on case of George Lynch.....	2	256
on case of Samuel McKnight.....	2	126
on case of Henry J. Snow.....	1	23
on case of Aaron Stafford.....	1	72
on case of Charles Staples.....	1	24
on case of William Wallace.....	2	127
on case of James Wright, jr.....	2	227
Mr. Hens, on case of James Holatin.....	3	366
purchasers and locators of swamp and overflowed lands.....	1	16



	Vol.	No.
Mr. Heister, on case of Mary H. Cushing.....	2	242
Mr. Hill, on case of George G. Bishop and the legal representatives of John Arnold.....	1	17
Mr. Hillyer, on case of Rosalie Caxillo.....	2	216
on case of Benjamin C. Cook.....	2	217
on case of Sylvanus Culver.....	2	205
on case of John Frazer and the administrator of John G. Clendenin.....	2	232
on case of Patrick Gass.....	2	215
on case of Wm. H. Henderson and the heirs of Robert Henderson.....	2	204
on case of the legal representatives of John Rice Jones.....	2	150
on case of A. S. Laughery.....	2	218
on case of William J. McElhiney, E. P. Matthews, and Lawrence Cribben.....	2	220
on case of the heirs of Benjamin Metoyer.....	2	247
on case of Enoch S. More.....	2	214
on case of Conrad Wheat, jr., or his legal representatives, on petition of M. Rippey.....	2	219
Mr. Houston—Senate amendments to Indian appropriation bill.....	2	201
Mr. Howe, on case of Isadore D. Beaugrand.....	3	361
on case of D. C. Cash and Giles U. Ellis.....	1	41
on case of Helen Mackay.....	1	40
on case of the heirs of Colonel Alexander G. Morgan.....	3	276
on case of Peter Randon, heir of John Randon.....	3	340
Mr. Hughes, on case of William Curran.....	2	213
on case of the heirs of George McGirk.....	3	341
on case of John McVea and John F. McKneely.....	2	212

*Subjects of reports.*

Hall, Catharine, and Caroline Gyzdaar, children of Robert McNeill.....	2	237
Hall, Lott, heirs of.....	2	148
Halsted, Henry N.....	1	21
Ham, Robert.....	1	78
Hamilton, John.....	1	48
Hammond, Benjamin.....	1	22
Hankins, William.....	1	65
Hascall, John, and Hiram Moore.....	1	84
Heard, William V., heir of General John Heard.....	2	177
Heminger, Jephtha L.....	3	364
Henderson, William H., and the heir of Robert Henderson.....	2	204
Herbert, Edward H.....	3	331
Herbon, Michael L., Charles Winter, and others.....	3	311
Hicks, John H.....	2	158
Hillery, Nick, <i>alias</i> Rignald.....	3	340
Hoffman, Henry, legal representatives of.....	2	149
Hogan, John, widow and heirs of.....	3	310
Hogan, Moses D.....	2	152
Holgate, Harvey, heir of Samuel Holgate.....	2	139
Holstin, James.....	3	356
Homestead to actual settlers.....	1	34
Hooe, Emilie.....	1	46
Hoople, Eleanor.....	2	252
Horton, Julia Sherburne, daughter of John Samuel Sherburne.....	2	238
House bill No. 342, (Minnesota railroad bill,) alteration of.....	3	352
Howard & Lyon.....	3	323
Howison, William G.....	2	143
Hudson, Lemuel.....	1	25
Humphrey, Sylvester, and the heirs of Alexander Humphrey.....	2	169
Huntington, Dimick B.....	1	60

I.

*Subjects of reports.*

Indian appropriation bill, Senate amendments to.....	2	201
Indians of California, schools for.....	3	267
Indians, Cherokee.....	2	123

# INDEX.

11

	Vol.	No.
Indians, terms of treaties hereafter to be made with certain tribes of.....	2	133
Indigent insane.....	2	126
Interpolation of joint resolution fixing the compensation of the employ��s of the legislative department of the government.....	3	351
Invalid pensions—extension of laws.....	2	263
Irwin, James.....	1	74

## J.

### *Report made by—*

Mr. R. Jones, on case of Wade Allen.....	2	136
--	---	-----

### *Subjects of reports.*

Jack, Captain Matthew, heirs of.....	2	145
Jarero, Jose Maria, and Jonas P. Levy.....	3	317
Jenks, Sarah K., <i>et al.</i> .....	1	68
Johnson, Hezekiah.....	1	73
Johnson, John.....	2	178
Johnson, Thomas S. J.....	1	85
Jones, Charles Lee.....	1	7
Jones, John Rice, legal representatives of.....	2	150
Jones, Mary A. M., widow of Brev. Maj. Gen. Roger Jones.....	2	190
Jones, Thomas Ap Catesby, surety of Walter F. Jones.....	2	226
Jordan, Thomas.....	3	290

## K.

### *Reports made by—*

Mr. Keitt—minority report on national armories (civil superintendency) .....	2	191
Mr. Kerr—claim of the State of Maryland .....	3	278

### *Subjects of reports.*

“Kate Boyd,” owners of brig.....	2	141
Kelsey, Joel.....	3	296
Kennedy, Joshua, legal representatives of.....	1	79
Kerr, Jacob.....	3	346
King, John H.....	2	251
King, John H.....	3	372
King, John S.....	1	83

## L.

### *Reports made by—*

Mr. J. H. Lane, on case of Hercules L. Dousman.....	1	71
on case of Robert Graham.....	2	134
Mr. Letcher, on case of John T. Ball.....	1	119
on case of James B. Estes.....	2	185
on extension of Colt's patent, &c., majority report.....	3	353
on case of Sylvester Humphrey, and the heirs of Alexander Humphrey.....	2	169
on case of Martin L. Patterson .....	1	11
on case of Wm. H. Topping.....	1	92
on case of Joseph D. Ward.....	2	184
on case of John Wilson.....	2	163
Mr. Lindley, on case of Epaphras Ripley.....	2	239

### *Subjects of reports.*

Lands unsold in Symmes's purchase .....	2	243
Lane, William Carr, contested election in New Mexico.....	1	121

	Vol.	No.
Lanham, Robert.....	3	327
Latham, Cornelius H.....	1	31
Latimer, Samuel M.....	3	268
Laughery, A. S.....	2	218
Lavallette, Captain E. A. F.....	1	98
Layton, Job M.....	1	20
Leach, Asa.....	3	320
Leavenworth, Harriet.....	1	26
Lee, Oliver.....	1	86
Legislative department of government, interpolation of joint resolution fixing the compensation of the employés of.....	3	351
Lendrum, Brevet Captain J. H.....	2	153
Levy, Jonas P., and Jose Maria Jarero.....	3	317
Lewis, Henry.....	1	8
Lewis, James M.....	1	109
Liscomb, Sarah, widow of Darius Liscomb.....	1	91
Lockwood, Isaac C.....	3	357
Loomis, Daniel, legal representatives of.....	3	337
Lovejoy, Esther.....	3	371
Lynch, George.....	2	256
Lyon and Howard.....	3	323

## M.

*Reports made by—*

Mr. Mace, on case of the heirs of Joseph Gerard.....	1	32
on case of John Hamilton.....	1	48
on case of Sarah K. Jenks, <i>et al.</i> .....	1	68
on case of Henry Lewis.....	1	8
ocean mail steamers.....	3	281
on case of Madison Parton.....	1	4
on case of the legal representatives of Isaac P. Simonton.....	1	3
on case of Daniel Steenrod.....	1	49
on case of Francis Vigo.....	1	117
on case of General John E. Wool.....	1	116
Mr. Maxwell, on case of the widow of Simeon Buckner.....	2	222
Mr. May, on case of Henry Gardner and others.....	2	209
on case of George Mattingly.....	2	210
on case of P. Menard and J. Bogy, heir-at-law of Joseph Placy.....	2	233
New York City Temperance Alliance.....	3	325
United States prison in New York city.....	2	244
Mr. Macdonald, on case of John O. Means.....	1	42
Mr. McDougall, on case of Charles W. Carroll.....	2	263
on case of Graham and Finnall.....	2	131
in relation to refunding the money to California employed in suppressing Indian aggressions.....	2	137
on case of Brevet Captain J. H. Lendrum.....	2	153
on case of Anthony G. Willis.....	1	58
Mr. Meacham—chaplains in Congress, and in the army and navy.....	2	124
Mr. Middleswarth, on case of Achsa Ayres.....	3	372
on case of Julia Sherburne Horton, daughter of John S. Sherburne.....	2	238
on case of William Peters.....	3	321
Mr. J. G. Miller, on case of Harvey Holgate, heir of Samuel Holgate.....	2	189
on case of Captain George Simpton.....	1	9
on case of Stephen Warren, of New York.....	2	187
on case of Woodbury and Foster, owners of the brig "Casket".....	2	188
Mr. Millson, on case of Noah Miller.....	1	120
Mr. Morrison—memorial of the Atlantic Mutual Insurance Company.....	1	36

*Subjects of reports.*

Mackall, James.....	3	308
Mackay, Helen, widow of Colonel Æneas Mackay.....	1	40
Mackay, Helen, widow and administratrix of Colonel Æneas Mackay.....	2	241
Mail steamers, ocean, (Collins line).....	3	281

# INDEX.

13

	Vol.	No.
Maine, Massachusetts, &c.—compensation and bounty land to certain American seamen.....	3	344
Marion, Mercer county, Ohio, civil township of.....	2	246
"Martha Washington," the steamboat—communication from the Secretary of the Treasury.....	2	135
Martin, Elizabeth.....	2	182
Maryland, claim of.....	3	278
Matthews, E. P., Wm. J. McElhiney, and Lawrence Cribben.....	2	220
Mattingly, George.....	2	210
Mauzy, Fayette, and Robert G. Ward.....	1	37
Mayo, William.....	1	110
McAtee and Eastham.....	2	130
McAvoy, John.....	3	316
McCauley, Francis A., widow of D. S. McCauley.....	1	95
McElderry, John P.....	3	339
McElhiney, William J., E. P. Matthews, and Lawrence Cribben.....	2	220
McGirk, George, heirs of.....	3	341
McGuire, Robert F.....	2	151
McKneely, John F., and John McVea.....	2	212
McKnight, Samuel.....	2	126
McLellan, Jacob.....	2	171
McMinn, Joseph.....	3	319
McNeill, Robert, Catharine Hall, and Caroline Gyzdaar, children of.....	2	237
McVea, John, and John F. McKneely.....	2	212
Meade, Everard, legal representatives of.....	2	206
Meade, Richard W., legal representatives of.....	1	5
Means, John O.....	1	42
Mears and Gardiner.....	3	369
Meier, Adolphus, & Co.....	1	13
Menard, Pierre, and J. Bogy, heir-at-law of Joseph Placy.....	2	233
Merrill, Edward, C. N. Morgan, and William R. Rodman.....	3	355
Metoyer, Benjamin, heirs of.....	2	247
Military Asylum at Washington—change of site.....	3	274
Military post near Pembina river, Minnesota.....	3	291
Miller, Hezekiah.....	3	335
Miller, Noah.....	1	120
Minnesota, military post near Pembina river, in.....	3	291
Minnesota railroad bill, (No. 342,) alteration of.....	3	352
Minnesota, Sioux lands or reservations in.....	2	138
Missouri, third regiment volunteers of.....	2	194
Missouri, inhabitants of Warren county, in.....	2	221
Mitchell, Edmund.....	2	155
Moore, Hiram, and John Hascall.....	1	84
More, Enoch S.....	2	214
Morgan, Colonel Alexander G., heirs of.....	3	276
Morgan, Charles N., William R. Rodman, and Edward Merrill.....	3	355
Morse, Daniel.....	2	229
Moylan, General Stephen.....	3	350

## N.

### Reports made by—

Mr. Nichols, civil township of Marion, Mercer county, Ohio.....	2	246
on case of Lloyd Dorsey and others.....	3	303
on case of Theodore E. Elliott.....	3	342
on case of Jacob Kerr.....	3	346
on case of Robert F. McGuire.....	2	151
on case of representatives of Charles Pavie.....	3	298
on case of A. B. Roman.....	2	170
inhabitants of Warren county, Missouri.....	2	221
Mr. Norton, on case of John Frink.....	3	343

### Subjects of reports.

Nash, Betsey, widow of Doctor Sylvester Nash.....	2	160
---	---	-----

	Vol.	No.
Nebraska and Kansas, minority report.....	1	89
Nelson, Alton.....	1	66
Nelson, William, heirs of.....	3	288
New England Mississippi Land Company, Henry Gardner and others, directors of	2	209
New Mexico contested election. Lane vs. Gallegos.....	1	121
New Mexico, memorial of the Legislative Council in reference to Fort Atkinson	2	223
New York City Temperance Alliance.....	3	325
New York, compensation and bounty land to certain American seamen.....	3	344
New York and San Francisco, remittance of duty on goods destroyed by fire in	2	202
New York, United States prison in.....	2	244
Nick Hillery, alias Rignald.....	3	340
Nye, Jonas W.....	3	326

## O.

*Reports made by—*

Mr. Orr, on claims for depredation in the Black Hawk war.....	2	179
on case of John Charles Frémont.....	3	269
on case of Dimick B. Huntington.....	1	60
on case of legal representatives of Joshua Kennedy.....	1	79
on case of Oneida Indians.....	1	61
schools for the education of the California Indians.....	3	267
terms of treaties hereafter to be made with certain tribes of Indians..	2	133
on case of representatives of Joseph Watson.....	2	198

*Subjects of reports.*

Ocean mail steamers.....	3	281
Ohio, civil township of Marion, Mercer county.....	2	246
Ohio, unsold lands in Symmes's purchase.....	2	243
Oneida Indians.....	1	61
Oregon, expenses of Cayuse war.....	2	122

## P.

*Reports made by—*

Mr. Parker, on case of Thomas Ap Catesby Jones, surety of Walter F. Jones..	2	226
steamboat Martha Washington.....	2	135
on case of Joshua Shaw and others.....	2	175
unsold lands in Symmes's purchase.....	2	243
Mr. Peckham, on case of the heirs of Captain Joshua Chamberlain.....	3	349
on case of the heirs of General Nathaniel Greene.....	3	283
on case of General Stephen Moylan.....	3	350
on case of the heirs of William Nelson.....	3	282
Mr. J. Perkins, diplomatic and consular system.....	3	348
on case of brig General Armstrong.....	2	139
on case of W. D. Porter.....	1	97
on case of J. R. Sands.....	1	96
Mr. Phelps, Senate amendments to the deficiency bill.....	2	132
Mr. Pringle, on case of Charles A. Grignon.....	2	197
on case of Joshua Vandruff.....	2	196

*Subjects of reports.*

Parker, William.....	3	295
Parker, Zebulon and Austin.....	3	297
Parton, Madison.....	1	4
Patterson, Martin L.....	1	11
Pavie, Charles, representatives of.....	3	248
Peale, Titian R.....	2	167
Pearce, Jonathan.....	3	294
Pembina river, Minnesota, military post near.....	3	291
Pensions, invalid, to extend the laws.....	2	263
Perkins, Enoch, heir of Zophar Perkins.....	1	88
Peru and the United States, trade between.....	3	347

# INDEX.

15

	Vol.	No.
Peters, William .....	3	391
Placy, Joseph—Menard, and Bogy, heir-at-law of.....	2	233
Pool, Sidney P.....	3	304
Porcher, Charles J.....	3	363
Porter, Evelina, widow of Commodore David Porter.....	2	257
Porter, Captain Thomas.....	1	104
Porter, W. D.....	1	97
Prison, United States, in New York.....	2	244
Public lands, reduction of price.....	1	33

## R.

### *Reports made by—*

Mr. Ready, on case of Thomas S. J. Johnson.....	1	85
on case of Lyon and Howard.....	3	323
on case of Gilbert C. Russell .....	1	69
Mr. Riddle, trade between Peru and the United States .....	3	347
Mr. Robbins, tariff, minority report.....	2	199
Mr. Rogers, on case of the heirs of Daniel Bedinger .....	1	105
on case of Isaac Bowman.....	1	106
on case of the heirs of Lieutenant Andrew Finley.....	3	284
on case of the heirs of Colonel Willis Riddick.....	1	108
on case of the legal representatives of John H. Stone.....	1	107
on case of Captain William Van Lear.....	3	296
on case of the administrator of Thomas Wishart.....	3	285
Mr. Rowe, on case of Robert Babcock .....	2	264
on case of Bethiah Black.....	2	266
on case of Mary Boyd, widow of John Boyd.....	2	234
on case of John Cole.....	2	255
on case of Betsey A. Faulkner, widow of Ebenezer Floyd.....	2	265
Mr. Ruffin, on case of Lincoln Bates.....	3	287
on case of Isaac C. Lockwood.....	3	357
on case of Benjamin Sayre.....	3	358

### *Subjects of reports.*

Railroad, Coosa and Tennessee River.....	1	62
Rallston, George J.....	3	318
Randon, Peter, heir of John Randon .....	3	360
Rawson, Zebina.....	3	296
Raymond, Warren .....	2	262
Reid, Samuel C., jr., on behalf of claimants in the case of the brig General Armstrong .....	2	139
Rice, Russell .....	3	269
Riddick, Nathaniel, administrator of Richard Taylor.....	2	211
Riddick, Colonel Willis, heirs of.....	1	108
Rignald, <i>alias</i> Nick Hillery.....	3	340
Ripley, Epaphras.....	2	239
Rippey, Matthew, on behalf of Conrad Wheat, jr.....	2	219
Robinson, Beverly, and Wm. A. and John Duer, trustees of the estate of Gen. Wm. Alexander.....	2	240
Robinson, John.....	3	332
Rodman, Wm. R., C. A. Morgan, and Edward Merrill.....	3	355
Roman, A. B.....	2	170
Ross, Samuel.....	2	236
Rowe, Benjamin.....	1	45
Russell, Gilbert C.....	1	69
Russell, John S. and Wm. H.....	1	59
Rutherford, Mary, widow of Samuel Rutherford.....	2	261

## S.

### *Reports made by—*

Mr. Sage, on case of George Elliott.....	2	260
on case of Warren Raymond.....	2	262

	Vol.	No.
Mr. Sage, on case of Mary Rutherford, widow of Samuel Rutherford.....	2	261
on case of John Steene.....	2	259
on case of Joseph Webb.....	2	268
Mr. Seymour, on case of representatives of John E. Bispham.....	1	39
on case of Thomas Thody.....	1	33
Mr. Shower, on case of legal representatives of Everard Meade.....	2	206
on case of Nathaniel Riddick, administrator of Richard Taylor.....	2	211
Mr. G. W. Smyth, expenses of the Cayuse war, Oregon.....	2	122
Mr. F. P. Stanton, on case of Wm. Case.....	3	359
on case of Gardiner & Mears.....	3	369
on case of F. Maury and R. G. Ward.....	1	37
Mr. R. H. Stanton, contested election in New Mexico, Lane vs. Gallegos.....	1	121
civil superintendencies in the national armories.....	2	191
Mr. Straub, on case of Alton Nelson.....	1	66
Mr. A. Stuart, on case of Jacob Baker.....	3	345
on case of Heman Chittenden.....	3	292
on case of George S. Claffin.....	1	27
compensation and bounty land to certain American seamen.....	3	344
on case of Mary Deany.....	1	82
on case of Jesse R. Faulkner.....	1	112
on case of Wm. Gove.....	3	293
on case of James F. Green.....	1	28
on case of Lemuel Hudson.....	1	25
on case of John S. King.....	1	83
on case of Harriet Leavenworth.....	1	26
on case of Wm. Parker.....	3	295
on case of Sidney P. Pool.....	3	304

*Subjects of reports.*

Salomon, John C. Fr.....	2	174
Sands, J. R.....	1	96
San Francisco steamship, rescue of.....	1	113
San Francisco and New York, remittance of duties on goods destroyed by fire in	2	202
Savage, Joseph, heirs of.....	2	147
Sayre, Benjamin.....	3	358
Schools for the education of the California Indians.....	3	267
Scott, Martha, widow of Samuel Scott.....	2	235
Shattuck, D. O., petition in relation to private land claims in California.....	1	70
Shaw, Joshua, and others.....	2	175
Shelton, Edward B.....	3	273
Sherburne, John Samuel—Julia S. Horton, daughter of.....	2	238
Sigler, Isaac M.....	2	231
Simonds, Lewis E.....	2	228
Simonds, Priscilla C., widow of Moses Simonds.....	1	118
Simonton, Isaac P., legal representatives of.....	1	3
Simpton, Captain George.....	1	9
Sioux lands or reservations in Minnesota.....	2	138
Slavin, Parmelia, late wife of John Blue.....	1	64
Smith, Francis Pettit.....	2	166
Smith, Larkin, heirs of.....	2	207
Smith, William G.....	3	322
Snow, Henry J.....	1	23
Stafford, Aaron.....	1	72
Staples, Charles.....	1	24
Steamboat "Martha Washington"—communication from the Secretary of the		
Treasury.....	2	135
Stedman, Emanuel P.....	1	75
Steene, John.....	2	259
Steenrod, Daniel.....	1	49
Stokeley, Captain Nehemiah, heirs of.....	2	144
Stonecutters on the extension of the Capitol.....	3	306
Stone, John H., legal representatives of.....	1	107
Swamp and overflowed lands, purchasers and locators of.....	1	16
Symmes's (John C.) purchase, unsold lands in.....	2	243

# INDEX.

17

## T.

### Reports made by—

	Vol.	No.
Mr. J. L. Taylor, on case of Grafton Baker .....	1	81
sale of the Winder building.....	2	193
Mr. Thurston, on case of Samuel Colt.....	1	6
extension of Colt's patent, &c.....	3	353
on case of Zebulon and Austin Parker.....	3	297
Mr. Tracy, on case of Hiram Moore and John Hascall.....	1	84
Mr. Tweed, on case of Lyman N. Cook.....	1	44
on case of William B. Edwards.....	1	47
on case of Emilie Hooe.....	1	46
on case of James M. Lewis .....	1	109
on case of Benjamin Rowe.....	1	45

### Subjects of reports.

Tariff.....	2	199
Taylor, Richard, Nath. Riddick, administrator of.....	2	211
Temperance Alliance of New York city.....	3	325
Tennessee and Coosa river railroad.....	1	62
Third regiment Missouri volunteers.....	2	194
Thody, Thomas.....	1	38
Thomas, Hartshorne R., legal representatives of.....	1	68
Thompson, Dr. S. A. ....	3	307
Thornton, Presley, heirs of.....	3	370
Topping, William H.....	1	92
Torrants, G. W.....	2	156
Towle, David.....	1	103
Trade between the United States and the republic of Peru.....	3	347
Tripp, Albra.....	1	115

## U.

### Report made by—

Mr. Upham, on case of John D. Colmesnil.....	2	142
--	---	-----

### Subjects of reports.

Underhill, Thomas, executor of Thomas Underhill.....	2	203
United States and Peru, trade between.....	3	317
United States prison in the State of New York.....	2	244
Unsold lands in Symmes's purchase.....	2	243
Utica Steam Woolen Company.....	1	50

## V.

### Reports made by—

Mr. Vail, on case of Anne W. Angus.....	2	159
on case of James Butler.....	2	157
on case of Ira Call.....	2	230
on case of Thomas Ellis.....	2	161
on case of George W. Gibson.....	1	63
on case of John H. Hicks.....	2	158
extension of the laws of invalid pensions.....	2	263
on case of William Mayo.....	1	110
on case of Daniel Morse.....	2	220
on case of Betsey Nash.....	2	160
on case of Evelina Porter, widow of Commodore David Porter.....	2	257
on case of Isaac M. Sgler.....	2	231
on case of Parnelia Slavin, late wife of John Blue.....	1	64
on case of the heirs of Larkin Smith.....	2	207
on case of James Walsh.....	1	111
on case of Charlotte S. Westcott.....	2	162

### Subjects of reports.

Van Brunt, Enlif.....	3	334
Vandruiff, Joshua.....	2	196



	Vol.	No.
Van Horn, James.....	3	328
Van Lear, Captain William.....	3	286
Vigil, Don Juan Jesus.....	2	200
Vigo, Colonel Francis, heirs of.....	1	117
Volunteers, third regiment Missouri.....	2	194

## W.

*Reports made by—*

Mr. Walley, on case of Hon. Thomas H. Bayly.....	3	354
Mr. I. Washburn, on case of Rebecca Baggerly, widow of David Baggerly.....	2	224
on case of Elizabeth Martin.....	2	182
Mr. T. Wentworth, on case of Nathaniel Goddard and others.....	2	172
on case of James Irwin.....	1	74
on case of Jacob McLellan.....	2	171
on case of Morgan, Rodman, and Merrill.....	3	355
West Feliciana Railroad and Georgia Railroad and Banking Company.....	3	368
Mr. Wheeler, extension of Colt's patent, &c.....	3	353
Mr. D. B. Wright, Sioux lands or reservations in Minnesota.....	2	138
Mr. H. B. Wright, on case of Edmund Berger.....	3	366
private land claims in California.....	1	70

*Subjects of reports.*

Wallace, William.....	2	127
Walsh, James.....	1	111
War, Black Hawk.....	2	179
Ward, Joseph D.....	2	184
Ward, Robert G.....	1	37
Warren county, Missouri, inhabitants of.....	2	221
Warren, Stephen, of New York.....	2	187
Washington, change of site of the military asylum.....	3	274
Watson, Joseph, representatives of.....	2	198
Webb, Joseph.....	2	258
Werrick, Wm. H.....	2	248
Walsh, James K.....	1	102
Westcott, Charlotte S., widow of Captain George C. Westcott.....	2	162
West Feliciana Railroad and Georgia Railroad and Banking Company.....	3	368
Wheat, jr., Conrad, or legal representatives of, on petition of M. Rippey.....	2	219
Wheatley, William.....	1	94
Wheaton, Joseph, heirs of, on petition of L. J. Anderson.....	1	90
Whitaker, Ira.....	1	89
White, Captain Tarpley, legal representatives of.....	2	176
Widows' pensions.....	1	101
Wilgus, Charles H.....	2	195
Williams, William G.....	3	315
Williamson, Lieutenant A. J.....	3	338
Willis, Anthony G.....	1	58
Willis, Lewis B.....	1	1
Wilson & Brothers.....	1	14
Wilson, John.....	2	183
Wilson, Willis, heirs of—recommitted.....	2	208
Winder, Wm. H.—Winder building.....	2	193
Winslow, Daniel, sureties of.....	3	314
Winter, Charles, and others.....	3	311
Wisbart, Thomas, administrator of.....	3	285
Woodbury and Foster, owners of brig "Casket".....	2	188
Woodbury, William.....	1	87
Wool, Major General John E.....	1	116
Wooster, Dr. J. Rutherford—schools for the California Indians.....	3	267
Wright, jr., James.....	2	227

## Z.

*Report made by—*

Mr. Zollicoffer—extension of Colt's patent, &c.....	3	353
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EXPENSES CAYUSE WAR, OREGON.

[To accompany bill H. R. No. 232.]

MARCH 8, 1854.

Mr. G. W. SMYTH, from the Committee on the Territories, made the following

REPORT.

*The Committee on the Territories, to whom was referred House bill No. 252, "to amend an act entitled 'An act to settle and adjust the expenses of the people of Oregon, in defending themselves from the attacks and hostilities of the Cayuse Indians, in the years 1847 and 1848,'" have had the same under consideration, and have instructed me to report the following facts in relation to the subject-matter of the bill, viz:*

It appears from the accompanying letter of the First Comptroller of the Treasury, of the 24th ultimo, marked "A," that of the \$100,000 appropriated by the act of the 14th of February, 1851, "to settle and adjust the expenses of the people of Oregon in defending themselves from the attacks and hostilities of the Cayuse Indians," there had been paid out, at that date, the sum of..... \$97,038 60  
Ten claims reported that morning..... 1,512 91

Amount in full..... 98,551 51  
leaving a balance of the original appropriation of \$1,448 49.

It also appears, by a letter addressed by the First Comptroller to the Hon. Joseph Lane, dated 23d ultimo, that at that date there were certificates of Cayuse war claims on file in said Comptroller's office, amounting to..... \$11,827 84

There were also certificates of awards, arising out of the Cayuse war in Oregon Territory, on file in the Fifth Auditor's office, amounting to..... 14,850 45

Together amounting to..... 26,678 29

A copy of the Comptroller's letter to the Hon. Joseph Lane, together with a statement of those claims now on file in said Comptroller's office, and a statement of those on file in the office of the Fifth Auditor of the Treasury, are likewise herewith presented, marked "B," "C," and "D," respectively.

It appears from documents "C" and "D," that of the \$26,678 29 of Cayuse war claims, now on file in the Treasury Department, there

are \$13,358 14 unprovided for by any existing law, and which cannot be allowed and paid without further legislation, viz:

Audited by Commissioner A. A. Skinner.....	\$3,426 07
Audited by Commissioner B. F. Harding.....	9,144 14
Audited by Commissioner C. M. Terry .....	787 15
<hr/>	
Total amount unprovided for in both offices.....	<u>13,358 14</u>

It further appears from House executive document No. 45, that the accounts of the various commissioners for services rendered in the adjustment of these Cayuse war claims amount to \$1,847 75, which, added to the \$26,678 29 already stated, make an aggregate of \$28,526 04. The committee have therefore recommended an appropriation of \$30,000, believing that sum sufficient to pay all the claims now on file, and the expenses necessarily arising in their adjustment. For the accounts of the commissioners for their services, and for further information in relation to these Cayuse war claims generally, reference is made to House executive document No. 45.

As these claims, from the circumstances attending them, cannot be substantiated by such vouchers as the law requires in other cases, the committee have thought it advisable that, in legislating on this subject, we should follow the example of our predecessors, by providing for the payment of such claims only as are in the Treasury Department, and have been subject to the scrutiny of its officers. The committee have therefore instructed me to report a substitute for the bill, and to recommend its passage.

---

A.

TREASURY DEPARTMENT,  
*Comptroller's Office, February 24, 1854.*

SIR: Your letter addressed to the honorable James Guthrie, Secretary of the Treasury, on the 20th instant, enclosing the copy of a bill under the consideration of the Committee on Territories, in regard to a further appropriation to defray the expenses of the Cayuse war, in the years 1847 and 1848, having been referred to this office, I respectfully submit the following statement:

On the 3d instant I made a report to the Secretary of the Treasury communicating most of the information you desire to obtain. That report, and the papers that accompanied it, are printed, and compose "House executive document, 1st session of the 33d Congress, No. 45," to which I respectfully refer you.

By an act approved on the 14th of February, 1851, Congress appropriated for paying these claims.....	\$100,000 00
And the 3d of February claims had been paid to the amount of. ....	96,775 41
<hr/>	
	3,224 59

There has been paid since.....	p63 19
Balance of that appropriation at this date.....	<u>2,961 40</u>

Ten claims have been reported this morning from the Fifth Auditor's office, the aggregate amount of which is \$1,512 91.

Permit me to suggest, there are some incidental expenses that should be paid, not embraced by the bill now under the consideration of the committee.

No provision has been made for paying the commissioners, or the clerk employed by Governor Gaines, for the services they have rendered. There may be other contingent expenses not now known to the department, or that may be necessarily incurred by Governor Davis; and I submit whether it is not expedient to empower the Secretary of the Treasury to allow claims of the character mentioned, on due proof, to be paid out of the appropriation that may be made by the contemplated act. If a power should be given to the Secretary of the Treasury to revise the awards of the commissioners when he should receive information that allowances were improperly certified, the treasury would be protected, and at the same time full justice be extended to the claimants. There are two awards suspended in this office in consequence of information received from Oregon.

If you desire any further information in this matter in this office, it shall be given; or if the services of the office should be required, they will be rendered with pleasure. The letter of the Secretary of War is returned.

Most sincerely yours,

ELISHA WHITTLESEY.

Hon. GEORGE W. SMYTH,  
*Of the Committee on Territories.*

B.

TREASURY DEPARTMENT,  
*Comptroller's Office, February 23, 1854.*

SIR: In compliance with your request, I send herewith two statements, as follows:

Certificates of Cayuse war claims on file in the office of the First Comptroller of the Treasury, amounting to....	\$11,827 84
Certificates for awards arising out of the Cayuse war in Oregon Territory, now on file in the office of the Fifth Auditor of the Treasury, amounting to.....	14,850 45

Together amounting to .....	<u>26,678 29</u>
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I am, respectfully, yours, &c.,

ELISHA WHITTLESEY,  
*Comptroller.*

Hon. JOSEPH LANE,  
*House of Representatives.*

*Certificates of Cayuse war claims on file in the office of the 1st Comptroller of the Treasury.*

In whose favor.	By whom made.	Amount.	Total.
A. Lawrence Lovejoy..	H. E. Wait, com'r.....		\$2,386 30
Do.....	L. A. Rice, do.....		1,524 20
Hudson's Bay Co.....	John P. Gaines, gov'r..	\$1,634 84	
Aaron E. Waite.....	do.....	846 00	
			2,480 84
David Burnside.....	B. F. Harding, com'r..	1,496 50	
Isaac W. Sullivan.....	do.....	465 00	
Cris. Taylor.....	do.....	258 50	
James Morris.....	do.....	267 00	
A. Moore.....	do.....	220 70	
Benjamin Bratton.....	do.....	88 05	
Mitchell Gilliam.....	do.....	296 94	
James M. Fulkerson...	do.....	234 05	
William Miller.....	do.....	113 00	
			3,439 74
John Crantrel.....	do.....	267 00	
John Gros Lewis.....	do.....	54 85	
J. N. Donald.....	do.....	267 00	
James S. Dill.....	do.....	17 73	
Thomas Moaleth.....	do.....	82 38	
J. C. Ross.....	do.....	113 61	
Wm. D. Canfield.....	do.....	267 00	
John Allen.....	do.....	22 91	
Estate of Stephen King, deceased.....	do.....	116 50	
Joseph Senegrallor....	Chester M. Terry, com'r	63 00	
Andrew J. Lenberger..	do.....	69 00	
F. M. P. Goff.....	do.....	116 50	
Albert Stewart.....	do.....	167 83	
Estate of M. A. Ford..	do.....	115 50	
A. M. Smith.....	do.....	252 95	
			1,996 76
Total.....			11,827 84

## D.

*List of certificates for awards arising out of the Cayuse war, in Oregon Territory, now on file in the office of Fifth Auditor of the Treasury.*

PAYABLE UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF THE  
21ST OF AUGUST, 1852.

To whom awarded.	Amount.
Joel Palmer.....A. E. Wait, commissioner ....	\$3,492 08
Hugh Burns.....do.....do.....	1,000 00
Lawrence Hall.....do.....do.....	521 18

ACT OF CONGRESS OF 2D MARCH, 1853.

Jesse Applegate.....John P. Gaines, governor. ....	1,442 55
Robert Newell.....do.....do.....	460 50
L. Maxwell.....do.....do.....	12 50
George W. Burnet.....do.....do. No sum, but as captain of riflemen 2 months and 19 days, and for 3 horses and 1 servant during said period.	

NOT PROVIDED FOR UNDER EITHER OF THE ABOVE ACTS.

Ichiel Kendall.....A. A. Skinner, commissioner...	223 33
William Barbour.....do.....do.....	100 00
Absalom T. Hedges.....do.....do.....	15 00
Perry G. Earl.....do.....do.....	218 05
John C. Danford.....do.....do.....	92 90
John McLaughlin.....do.....do.....	650 00
Robert Cowfield.....do.....do.....	66 44
John Scudder.....do.....do.....	118 50
Alexander Knox.....do.....do.....	119 87
Thomas Summers.....do.....do.....	139 78
John McLaughlin.....do.....do.....	1,682 20
Hiram Clark.....B. F. Harding, commissioner...	1,443 82
Leister Hulin.....do.....do.....	292 25
F. A. Blanchett.....do.....do.....	240 79
William R. Pugh.....do.....do.....	227 15
James L. Belieu.....do.....do.....	244 42
John Feichter.....do.....do.....	312 35
Seborn P. Thornton.....do.....do.....	266 30
Joseph J. Rosson.....do.....do.....	113 50
Eliza C. Dice.....do.....do.....	93 88
William Wright.....do.....do.....	300 14
William K. Kilborn.....do.....do.....	77 50
Sam'l Geddes and Jno. J. Nye.....do.....do.....	183 48
James Altry.....do.....do.....	38 00
William M. Carpenter.....do.....do.....	661 99









CHEROKEE INDIANS.

MARCH 20, 1854.—Ordered to be printed.

Mr. GROW, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred the memorial of Cherokee Indians residing in States east of the Mississippi river, praying the payment of money which they claim to be due them per capita under the treaty of 1835-'36, and 1846, have had the same under consideration, and beg leave to submit the following report:*

On the 29th of December, 1835, a treaty was concluded at New Echota, in the State of Georgia, with the chiefs, head men, and people of the Cherokee tribe of Indians for the purchase of their lands and possessions east of the Mississippi river, and for their removal to a country west. By the first article of said treaty, the United States agreed to pay said tribe for their lands, and all claims for spoliation, the sum of \$5,000,000; and by a supplemental article, concluded March 1, 1836, it was stipulated by the third article of said supplement, "that the sum of six hundred thousand dollars shall be, and the same is hereby, allowed to the Cherokee people, to include the expense of their removal and all claims of every nature and description against the government of the United States not herein otherwise expressly provided for." The treaty fund, therefore, fixed by the treaty and its supplementary articles, was \$5,600,000, the mode and manner of the payment of which was fixed by the fifteenth article of the treaty in the following words: "It is expressly understood and agreed between the parties to this treaty, that, after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims for spoliation, removal, subsistence, and debts and claims upon the Cherokee nation, and for the additional quantity of land and goods for the poorer class of Cherokees, and the several sums to be invested for the general national funds provided for in the several articles of this treaty, the *balance*, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation east according to the census just completed." But by the twelfth article of said treaty, "those individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi, and are desirous to become citizens of the States where they reside, and such as are qualified to take care of themselves and their property, shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements, and *per capita*;

so that all who remained in the States in compliance with this article were entitled, under the treaty of 1835, to their proportionate share of the balance of the treaty fund, after deducting the items of expenditure specified in the 15th article of said treaty. But in consequence of difficulties arising out of the proper construction of the treaty of 1835, but more especially in consequence of the different factions into which the Cherokee nation had become divided, a new treaty was concluded at Washington the 6th August, 1846, sanctioned by each faction and all portions of the Cherokees. By the 9th article of this treaty the United States agree to make a fair and just settlement of all moneys due to the Cherokees." \* \* \* \* "And the balance thus found to be due shall be paid over *per capita* in equal amounts to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835 and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto." And by the 11th article of the same treaty certain questions were submitted to the Senate of the United States for its decision as umpire. In order to carry that article into effect, a joint resolution of Congress was passed, August 7, 1848, requiring the Second Comptroller and Second Auditor of the Treasury to make a fair and just statement of the claims of the Cherokee nation of Indians according to the principles established by the treaty of 1846, and that statement, together with the report of Mr. Sebastian, chairman of the Committee on Indian Affairs, is hereto appended and made part of this report.

By the statement of the accounting officers there was due the Cherokees, December 3, 1849.....	\$627,603 95
To which the Senate, acting as umpire, add for certain contingent expenses improperly deducted from the treaty fund.....	96,999 42
They also find overcharged for subsistence.....	189,422 76
	<hr/>
Making the whole amount due at that time.....	914,026 13
	<hr/> <hr/>

Of which amount the eastern Cherokees have received their proportionate *per capita*; but they now claim additional \$92,625 18, which they say is justly due under the treaty of 1835. For, by the 1st article of the treaty of 1846, "It is expressly agreed that nothing in the foregoing treaty contained shall be so construed as in any manner to take away or abridge any rights or claims which the Cherokees now residing in States east of the Mississippi river had or may have under the treaty of 1835 and the supplement thereto." What, then, were their rights and claims under the treaty of 1835?—for, whatever they were, they remained unaffected by the treaty of 1846.

The amount the government agreed to pay by the treaty of 1835, and the supplement thereto, was...	\$5,600,000 00
The expenditures provided for in the 15th article of said treaty that are to be deducted from this sum, the items of which are given on the third page of the Senate's report hereunto appended, amount to.	4,028,653 45
	<hr/>

Which, being deducted from the treaty fund, leaves for <i>per capita</i> distribution among all the Cherokees east and west .....	\$1,571,346 53
But the Cherokees east have received their proportion- ate share of. ....	914,026 13

• which, deducted, would leave, for treaty of 1846, but 657,320 40  
to be divided *per capita* among all the Cherokees. But as the Chero-  
kees east, by the tenth article of the treaty of 1846, were not in any  
way to be affected in their rights and claims, under the treaty of 1835,  
by any thing contained in the treaty of 1846, they are therefore enti-  
tled to their proportionate share of the \$757,320 40; to which should be  
added \$22,212 76, the amount charged on third page of Senate report for  
Cherokee committee, and which was improperly deducted from the treaty  
fund, as it is not one of the items specified in the fifteenth article of the  
treaty, by which the kind of expenditure is fixed that is to be deducted  
from said fund. By the supplemental article to the treaty of 1835,  
\$600,000 was agreed upon, "to include the expense of removal and all  
claims of every nature and description against the government of the  
United States not herein otherwise expressly provided for." An amount  
for removal and capitations, exceeding \$600,000, could not therefore  
be deducted from the treaty fund. But the cost of removing the  
18,026 Indians, being the number removed at \$20 per head, amounts  
to the sum of. ....\$360,520 00  
And there was charged for spoliation. .... 264,894 09

Making in all, for removal and spoliation. .... 625,414 09

being \$25,414 09 greater than the amount provided for in the treaty,  
and therefore improperly deducted from the treaty fund, and which  
amount should therefore be added to the \$657,320 40, making the whole  
amount justly due to the Cherokees under the treaty of 1835, \$704,-  
947 16, of which the Cherokees east would be entitled to their propor-  
tionate share; the Cherokees west being concluded by the treaty of 1846.  
Divide this sum equally between 16,231, this being the number of  
Cherokees both east and west by the census of 1851, under which  
the \$914,026 13 was paid *per capita*, and it would give each person  
\$43 43 per head. But the western Cherokees have no further claim to  
*per capita*, being concluded by the treaty of 1846 and the final settle-  
ment of February 27, 1851; and the number of Cherokees east by the  
census aforesaid, who are entitled to *per capita*, being 2,133, at the rate  
of \$43 43 per head, would give them in the aggregate, as their propor-  
tionate share of this amount still due, the sum of \$92,625 19, with in-  
terest from December 14, 1852, to time of payment, for which your  
committee recommend an appropriation.

IN SENATE OF THE UNITED STATES—August 8, 1860.

Mr. SEBASTIAN made the following report :

*The Committee on Indian Affairs, to whom was referred the memorial of the delegates of the Cherokee nation and of the "Western Cherokees," and the report of the accounting officers upon the treaty of August 6, 1846, respectfully report :*

That in consequence of difficulties arising out of the proper construction of the treaty of 1835 between the United States and different parties and factions of the Cherokees, the new treaty of 1846 was made, sanctioned by each party of the Cherokees. Its object was to fix the true construction of the first named treaty in reference to certain controverted questions, and ascertain and adjust the rights of each party under it. This was done by the 4th article, so far as the western Cherokees or "Old Settlers" were concerned, while the basis of a settlement with the eastern Cherokees was the subject of the 3d and 9th articles of that treaty. The statement of the accounts according to the principles of the treaty of 1846, between the United States and the western and eastern Cherokees respectively, was a labor of time and research, involving an examination of every item of expenditure under the treaty of 1835, through a period extending from the year 1835 to 1846. This duty was, therefore, committed by the joint resolution of Congress of the 7th of August, 1848, to the Second Auditor and Second Comptroller of the Treasury; not only because they were the "proper accounting officers," but because one of those officers had acted as one of the commissioners of the United States in making the treaty of 1846, and was justly supposed to be well informed as to its true object and intent. The result of their labors is presented in their report of December 3, 1840, which the committee adopt and refer to as a part of their report.

By the report referred to there is a balance due the Cherokee nation of \$627,603 95. There is a further sum of \$96,999 31 charged to the general treaty fund, paid to the various agents of the government connected with the removal of the Indians, which they contend is an improper charge upon the sum allowed by the treaty of 1835, the supplemental article of 1836, and the additional appropriation of June 12, 1838. By the 9th article of the treaty of 1846, it was provided that "the United States agree to make a fair and just settlement of all moneys due the Cherokees, and subject to the *per capita* division under the treaty of December 29, 1835; which said settlement shall exhibit all money properly expended under said treaty, and shall embrace all sums paid for improvements, ferries, spoliations, removal and subsistence, and commutation therefor, debts and claims upon the Cherokee nation of Indians for the additional quantity of land ceded to said nation, and the several sums provided in the several articles of the treaty to be invested as the general funds of the nation; and also all sums which may be hereafter properly allowed and paid under the provisions of the treaty of 1835. The aggregate of which said several sums shall be deducted from the sum of six million six hundred and forty-seven thousand and sixty-seven dollars; and the balance thus found to be due shall be paid over *per capita* in

equal amounts to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835 and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto. This article defines the basis of settlement with the Cherokees, (except the "Old Settlers,") and is the authority under which the balance above stated is found to be due. It is contended by the Cherokees that the amount expended by the United States for agents, as specified in the report of the accounting officers, is not, in the meaning of the 9th article of the treaty of 1846, "properly expended under said treaty," and is an "improper and extravagant" charge upon the general treaty fund. In this belief the committee concur. In the 3d article of the treaty of 1846, which professes to enumerate certain charges, from which both the eastern and western Cherokees were to be relieved, the "sums paid to *any* agent of the government" are specially named. They are placed on the footing of "rents" and "reservations" under the treaty of 1835, and expenses of making that treaty, and admitted to be expenditures which should be borne by the United States. They were properly so considered. Though incidental, they were not necessary expenses incurred in the removal, &c., of the Indians. They were a part of a very complicated and expensive machinery employed in the emigration of the Indians, more with a view to the hastening of removal and preventing depredations of the Indians on the way, than to any absolute necessity. They were *necessary* only in one respect, and that was to enable the United States to perform *its* obligations under the treaty, and to discharge the high trust which it had for its own policy assumed. The amount should be, therefore, reimbursed, and added to the general balance of.....\$627,603 95  
96,999 42

and making in the whole.....724,603 37  
the true balance due to the Cherokee nation under the principles stated in the 9th article of the treaty of 1846.

By that article it is further stipulated, that the general aggregate fund shall be charged with all sums "which may be hereafter paid under the treaty of 1835." The committee are not in possession of certain information as to what amount, or whether any claims under that treaty have been paid, since the date of the report made by the accounting officers. To cover any such amount which may have been, or may hereafter be, made, it will be necessary in the bill to subject the appropriation to that contingency.

By the 4th and 5th articles of the treaty of 1846 provision is made and a basis fixed for the settlement with that part of the Cherokee nation known as the "Old Settlers" or "Western Cherokees," being those who had emigrated under the treaties of 1817, 1819, and 1828, and were, at the date of the treaty of 1835, an organized and separate nation of Indians, whom the United States had recognised as such by the treaties of 1828 and 1833, made with them. In making the treaty of 1835 with the Cherokees east, which provided for their final and complete transfer to the country west, then occupied by the "Western Cherokees," guaranteed in perpetuity by two treaties, upon considerations connected alone with them, their exclusive right to their country seems

to have been forgotten. The consequences of this unlooked-for precipitation of the entire nation upon them may be easily imagined. The western Cherokees, in all national matters, sunk into a hopeless minority; their ancient government was subverted, and a new one, imported with the emigrants coerced under the treaty of 1835, substituted in its place. It was the first instance on record of an entire nation transplanted, with its people, laws, institutions, and political constitution, to a new home, and preserving its nationality. Great discontent among the "Old Settlers" was produced by this emigration and its consequences. To allay this, and provide compensation to them for the undivided interest which the United States regarded them as owning in the country east of the Mississippi, under the equitable operation of the treaty of 1828, was the object of the treaty of 1846. To ascertain their interest, it was assumed that they constituted one-third of the entire nation, and should be entitled to an amount equal to one-third of the treaty fund, after all just charges were deducted. This fund, provided by the treaty of 1835, consisted of..... \$5,600,000 00

From which are to be deducted, under the treaty of 1846, (4th article,) the sums chargeable under the 15th article of the treaty of 1835, which, according to the report of the accounting officers, will stand thus:

For improvements .....	\$1,540,572 27
For ferries.....	159,572 12
For spoliation.....	264,894 09
For removal and subsistence of 18,026 Indians, at \$53 33½ per head.....	961,386 66
Debts and claims upon the Cherokee nation, viz:	
National debts (10th article) \$18,062 06	
Claims of United States cit- izens (10th article) ....	61,073 49
Cherokee committee (12th article) .....	22,212 76
	<hr/> 101,348 31
Amount allowed United States for addi- tional quantity of land ceded.....	500,000 00
Amount invested as general fund of the nation .....	500,880 00

Making in the aggregate the sum of..... 4,028,653 45

- Which, being deducted from the treaty fund of \$5,600,000, leaves the residuum, contemplated by the 4th article of the treaty of 1846, of..... 1,571,346 55

Of which amount one-third is to be allowed to the western Cherokees for their interest in the Cherokee country east, being the sum of \$523,782 18, for which the committee recommend an appropriation.

There remain yet to be considered two questions under the treaty of 1846, about which the parties could not agree. They were referred to

the Senate as umpire, and its decision will be final, and become a part of the treaty. The first of these is, whether the amount expended for the one year's subsistence of the eastern Cherokees, after their arrival in the west, should be borne by the United States or by the Cherokee funds; and if by the latter, then, whether subsistence shall be charged at a greater rate than \$33 33 $\frac{1}{3}$  per head. In the consideration of this question the committee have found great difficulty in coming to a just conclusion. The inartificial manner in which the treaty of 1835 was drawn, its ambiguity of terms, the variety of construction placed upon it, have led to great embarrassment in arriving at the real intention of the parties. Nor can much additional light be found in the interpretations which it has since received. Upon the whole, the committee are of opinion that the charge should be borne by the United States.

The committee entertain no doubt but that by the strict construction of the treaty of 1835 the expense of a year's subsistence of the Indians after their removal west was a proper charge upon the treaty fund. It was so understood by the government at the time, and as such was enumerated among the expenditures to be charged to that fund in the 15th article of the treaty. In the original *projet* of a treaty which was furnished to the commissioner empowered to treat with the Indians, this item was enumerated among the expenditures, investments, and payments to be provided for in its several articles, and which made up the aggregate sum of \$5,000,000 to be paid for the Cherokee country. The Secretary of War, in a letter addressed to John Ross and others, dated \_\_\_\_\_, 1836, says that the United States having allowed the full consideration for their country, nothing further would be allowed for expenses of removal and subsistence. This was before the ratification of the treaty, while a memorial was submitted by John Ross and the other delegates against the ratification of the treaty, accompanied by a copy of the original *projet* of the treaty expressly including this charge among those to be borne by the fund. In general, the treaty expressly designates those subjects which constitute or were made independent charges upon the United States. The whole history of the negotiation of this treaty shows that the \$5,000,000 was the maximum sum which the United States were willing to pay, and that this was not so much a consideration for the lands and possessions of the Indians, as an indemnity to cover the necessary sacrifices and losses in the surrender of one country and their removal to another. It is understood that this construction formed one of the objections urged by its opponents against the adoption of the treaty by the Cherokee people. On the other hand, among the circumstances establishing the propriety of a contrary construction, may be mentioned the language in the 8th article of the treaty: "The United States *also* agree and stipulate to remove the Cherokees to their new homes, and to *subsist* them *one year* after their arrival there." This imports pecuniary responsibility, rather than a simple disbursement of a trust fund. In the talk which was sent by President Jackson to the Indians to explain the advantages of the proposed treaty he mentions that the stipulations offered "provide for the removal, *at the expense of the United States*, of your whole people, and for their subsistence a year after their arrival in their new country." It may be



mentioned, also, that such has been the almost invariable policy of this government. The expense of removal and subsistence are the ordinary sacrifices which a simple remuneration for the price of homes does not compensate. The neighboring tribes of the Chickasaws, Choctaws, Creeks, and Seminoles, were removed and subsisted at the expense of the government. It is not, therefore, a source of wonder that a conflicting interpretation of this treaty, pursued through a series of years, should have produced embarrassments, partially relieved by the treaty of 1846; while this, the most obstinate of all, has been left to the final arbitrament of the Senate.

The committee, however, base their opinion upon grounds independent of the treaty of 1835. This treaty, with its supplementary article, was finally ratified on the 23d of May, 1836, and by its provisions the Cherokees were required to remove within two years. The time elapsed 23d May, 1838. It had been concluded, in defiance of the protest of a large majority, with a small minority of the nation, who saw no other escape from threatened ruin. Within that period those who had favored the treaty had mostly emigrated to the west under its provisions. The large majority of the nation, adopting the counsels of John Ross—a man represented as of unlimited influence among them—had obstinately withstood all the efforts of the government of the United States to induce them to adopt the treaty or emigrate under its provisions. Ross and his party had constantly repudiated its obligation, and denounced it as a fraud upon the nation. In the mean time, the United States had appointed its agents under the treaty, and collected a large military force to enforce the execution of the treaty. The State of Georgia had adopted a system of hostile legislation intended to drive them from the country. She had surveyed the country, and disposed of the homes and firesides of the Cherokees by lottery, dispossessed them of their lands, subjected them to her laws, while she disqualified them to hold any political or civil rights. In this posture of affairs the Cherokees, who had never abandoned the vain hope of remaining in the country or obtaining better terms from the United States, through John Ross and others, made new proposals to the United States for the sale of their country and emigration to the west. Still pursuing the idea that they were aliens to the treaty of 1835, and unfettered by its provisions, they proposed to release all claim to their country and emigrate for a named sum of money, in connexion with other conditions, among which was the stipulation that they should be allowed to take charge of their own emigration, and that the United States should pay the expense of their emigration. To avoid the necessity of enforcing the treaty at the point of the bayonet, and to relieve itself of its counter obligations to Georgia by the compact of 1802, and to the Cherokees by the treaties of 1817 and 1819, the proposal was readily acceded to. On the 18th of May, 1838, Mr. Poinsett, then Secretary of War, addressed a reply to the proposals of the Cherokee delegation, in which he says: "If it be desired by the Cherokee nation that their own agents should have the charge of their emigration, their wishes will be complied with, and instructions be given to the commanding general in the Cherokee country to enter *into arrangements with them to that effect.* With regard to the *expense*

of this operation, which you ask may be defrayed by the United States, in the opinion of the undersigned, the request ought to be granted, and an application for such further sum as may be required for this purpose shall be made to Congress." The Secretary, under date of June 1, 1838, in explaining to General Scott, then in command in the Cherokee country, why this negotiation had not been transferred to him, says: "No new treaty has been made, nor propositions for a treaty entertained; but it is proposed to make such allowances to the Cherokees as it is believed were intended originally by the Senate. If it had been referred to you where you now are, there would have been no influential chiefs on the spot with whom you could have treated. You would not probably have considered yourself authorized to propose the payment of the expenses of their removal and subsistence, involving, as it does, so large an amount; and the delay which must have attended the transmission of any arrangement entered into by you, at so great a distance, would have hazarded its successful passage through both branches of Congress." An application was made, and a resolution of the House of Representatives adopted, inquiring how much would be required for that purpose. Mr. Poinsett replies to this resolution on the 25th of May, 1838, in a letter, from which the following is an extract:

"The payment of the expenses of removing the remaining	
Cherokees, estimated at 15,840, at \$30 a head.....	\$475,200
"Amount applicable to that purpose.....	39,300
<hr/>	
"Balance to be provided for.....	335,900
<hr/>	

"If it should be deemed proper to make any further provision for the payment of the subsistence of the emigrants for one year after their arrival in the west, it requires—estimating the whole number at 18,335, thereby including those who have already emigrated, and allowing the amount stipulated to be paid by treaty, viz: \$33 33 a head—\$611,105 55."

These estimates, with a message containing the provisional arrangement with John Ross, were communicated to Congress, and received its sanction by the act of June 12, 1838, in the following language:

"That the sum of \$1,047 67 be appropriated out of any money in the treasury not otherwise appropriated, in full for all objects specified in the 3d article of the treaty of 1835 between the United States and the Cherokees; and for the further object of aiding in the subsistence of the Indians for one year after their removal west: *Provided*, That no part of the said sum of money shall be deducted from the \$5,000,000 stipulated to be paid to said tribe of Indians by said treaty: *And provided further*, That the said Indians shall receive no benefits from said appropriation, unless they shall complete their emigration within such time as the President shall deem reasonable, and without coercion on the part of the government."

Here was a clear legislative affirmation of the terms offered by the Indians and acceded to by the Secretary of War. It was a new contract with the Ross party, outside of the treaty, or rather a new

consideration offered, to abide by its terms. The Secretary of War agrees to consider the expenses of removal and *subsistence*, as *intended* by the treaty of 1835, to be borne by the United States, and Congress affirm his act by providing that no part of the \$1,647,067 should be taken from the treaty fund. It was made auxiliary to the \$600,000 provided for in the third supplemental article—a fund provided for removal and other expenditures independent of the treaty, and in full for these objects. But as respects *subsistence*, it was *in aid* of the *expense* for that purpose, a discharge *pro tanto* of the obligation of the government to subsist them, and not final satisfaction as in the case of removal. The fund proved wholly inadequate for these purposes. The entire expense of removal and subsistence amounted to \$2,952,196 26, of which the sum of \$972,844 78 was expended for subsistence, and of this last amount \$172,316 47 was furnished to the Indians when in great destitution, upon their own urgent application, after the expiration of the one year, upon the understanding that it was to be deducted from the moneys due them under the treaty. This leaves the net sum of \$800,528 31 paid for subsistence, and charged to the aggregate fund. Of this sum the United States provided by the act of 12th June, 1838, for \$611,105 55. The committee regard this sum as paid for subsistence; leaving yet unpaid, or rather overcharged, the sum of \$189,422 76, to be added to the balance found due, \$724,603 37; making in the aggregate the sum of \$914,626 13.

By the treaty of August, 1846, it was referred to the Senate to decide, and that decision to be final, whether the Cherokees shall receive interest on the sums found due them from a misapplication of their funds to purposes with which they were not chargeable, and on account of which improper charges their money has been withheld from them. It has been the uniform practice of this government to pay and demand interest in all transactions with foreign governments, which the Indian tribes have always been said to be, both by the Supreme Court and all other branches of our government, in all matters of treaty or contract. The Indians, relying on the prompt payment of their dues under the treaty, in many cases contracted debts upon the faith of it, upon which they have paid or are liable to pay interest. If, therefore, they do not now receive interest on their money so long withheld from them, they will, in effect, have received nothing. Your committee, therefore, think that interest should be allowed at the rate of 5 *per cent. per annum*, from the date of removal until ———.

The committee therefore offer the following resolutions, viz:

*Resolved by the Senate of the United States*, (as umpire under the treaty of 1846,) That, under the circumstances, the Cherokee nation are entitled to the sum of \$189,422 76 for subsistence, being the difference between the amount allowed by the act of June 12, 1838, and the amount actually paid and expended by the United States, and which excess was improperly charged to the treaty fund in the report of the accounting officers of the treasury.

*Resolved*, That it is the sense of the Senate that interest, at the rate of five per cent. per annum, should be allowed upon the sums found due the "eastern" and "western" Cherokees respectively, from the 12th day of June, 1838, until paid.

*Report of the Second Comptroller and Second Auditor of the Treasury, with a statement of the claims of the Cherokee nation of Indians, according to the principles established by the treaty of August, 1846.*

TREASURY DEPARTMENT, December 3, 1849.

SIR: The proper accounting officers of the treasury having been required, by the joint resolution of the 7th of August, 1848, to make a just and fair statement of the claims of the Cherokee nation of Indians, according to the principles established by the treaty of August, 1846, between the United States and said Indians, do now, as required by said resolution, report that they have caused a full and thorough examination to be made of all the accounts and vouchers of the several officers and agents of the government of the United States, who have disbursed money appropriated to carry into effect the treaty with the Cherokee nation of 1835, and also of the claims that have been admitted at the treasury. As the result of said examination, it appears that there has been paid—

For improvements, the sum of .....	\$1,540,572 27
For ferries, the sum of .....	159,572 12
For spoiliations, the sum of .....	264,894 09
For removal and subsistence, and commutation therefor, including \$2,765 84 expended for goods for the poorer classes of Cherokees, as mentioned in the 15th article of the treaty of 1835-'6; and including, also, necessary incidental expenses of enrolling agents, conductors, commissaries, medical attendance, supplies, &c., the sum of .....	2,952,196 26
For debts and claims upon the Cherokee nation, the sum of .....	101,348 31
For the additional quantity of land ceded to said nation, the sum of .....	500,000 00
For amount invested as the general fund of the nation, the sum of .....	500,880 00
<hr/>	
The "aggregate of which general sums" is .....	6,019,463 05
And which, being deducted from the sum of .....	6,647,067 00
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agreeably to the directions of the ninth article of the treaty of 1846, leaves a balance of..... 627,603 95 due to the Cherokee nation.

As it is contended by the agents of the Cherokee nation that sundry items of expenditure embraced in the foregoing statement are not properly chargeable upon the nation under the treaty of 1846, particularly a portion of the incidental expenses connected with the removal, amounting to \$96,999 42, the undersigned report herewith a particular statement of those expenses, showing the amount thereof in detail, in order that the question thus raised on the part of the Cherokees may be decided by Congress. Which is respectfully submitted.

ALBION K. PARRIS, *Second Comptroller.*

P. CLAYTON, *Second Auditor.*

To the *PRESIDENT of the Senate of the United States.*

*Statement of the claims of the Cherokee nation of Indians, according to the principles established by the treaty of August, 1846, between the United States and said Indians; prepared by the accounting officers in obedience to a resolution of Congress, approved August 7, 1848.*

Amount granted to the Cherokees by the first article of the treaty of 1835, for their lands east of the Mississippi.....	\$5,000,000 00
Amount granted by the third article of the supplement.....	600,000 00
Amount appropriated by Congress for objects specified in the third article of the supplement, per act of June 12, 1838.....	1,047,067 00
	<hr/> 6,647,067 00

From which deduct amount paid for—

Improvements.....	\$1,540,572 27
Ferries.....	169,573 13
Spoliations.....	264,894 09
Removal and subsistence, and commutation therefor, including \$2,765 84 expended for goods for the poorer classes of Cherokees, as mentioned in the fifteenth article of the treaty of 1835-'6; and including, also, necessary incidental expenses of enrolling agents, conductors, commissaries, medical attendance and supplies, &c., viz:	
Removal and subsistence, and commutation therefor.....	\$2,823,192 93
Physicians, matrons, medicines, hospital stores, &c.....	32,003 91
Superintendent of removal.....	\$7,188 70
Clerk to superintendent of removal.....	3,985 50
Interpreter to superintendent of removal.....	2,706 54
Disbursing agents.....	2,725 00
Conductors.....	12,097 40
Interpreters to various agents.....	16,102 00
Issuing agents.....	9,792 40
Enrolling agents.....	16,418 50
Contingent expenses of superintendent and disbursing agent.....	25,963 38
	<hr/> 96,969 42
	2,952,196 26

Debts and claims upon the Cherokee nation, viz:

National debts, (10th article).....	18,062 06
Claims of United States citizens, &c., (10th article).....	61,073 49
Cherokee committee, (12th article).....	22,212 76
	<hr/> 101,348 31

Amount allowed the .....		
Amount invested as the general fund of the nation .....		
Amount of land ceded to said nation .....	500,000 00	
	500,890 00	
Balance due Cherokee Indians.....		6,019,403 05
		<u>627,613 95</u>









CHAPLAINS IN CONGRESS AND IN THE ARMY AND  
NAVY.

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MARCH 27, 1854.—Ordered to be printed.

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Mr. MEACHAM, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom were referred the memorials of citizens of several States, praying that the office of chaplain in the army, navy, at West Point, at Indian stations, and in both houses of Congress, be abolished, respectfully report :*

That they have had the subject under consideration, and, after careful examination, are not prepared to come to the conclusion desired by the memorialists. Having made that decision, it is due that the reason should be given. Two clauses of the constitution are relied on by the memorialists to show that their prayer should be granted. One of these is in the sixth article, that "no religious test shall ever be required as a qualification to any office or public trust under the United States." If the whole section were quoted, we apprehend that no one could suppose it intended to apply to the appointment of chaplains.

"ART. 6, Sec. 3. The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States."

Every one must perceive that this refers to a class of persons entirely distinct from chaplains.

Another article supposed to be violated is article 1st of Amendments : "Congress shall make no law respecting an establishment of religion." Does our present practice violate that article ? What is an establishment of religion ? It must have a creed, defining what a man must believe ; it must have rites and ordinances, which believers must observe ; it must have ministers of defined qualifications, to teach the doctrines and administer the rites ; it must have tests for the submissive, and penalties for the non-conformist. There never was an established religion without all these. Is there now, or has there ever been, anything of this in the appointment of chaplains in Congress, or army, or navy ? The practice before the adoption of the constitution is much the same as since : the adoption of that constitution does not seem to have changed the principle in this respect. We ask the memorialists to look at the facts. First, in the army : chaplains were appointed for the revolu-

tionary army on its organization; rules for their regulation are found among the earliest of the articles of war. Congress ordered, on May 27, 1777, that there should be one chaplain to each brigade of the army, nominated by the brigadier general, and appointed by Congress, with the same pay as colonel; and, on the 18th of September following, ordered chaplains to be appointed to the hospitals in the several departments, with the pay of \$60 per month, three rations per day, and forage for one horse.

When the constitution was formed, Congress had power to raise and support armies, and to provide for and support a navy, and to make rules and regulations for the government and regulation of land and naval forces. In the absence of all limitations, general or special, is it not fair to assume that they were to do these substantially in the same manner as had been done before? If so, then they were as truly empowered to appoint chaplains as to appoint generals or to enlist soldiers. Accordingly, we find provision for chaplains in the acts of 1791, of 1812, and 1838. By the last there is to be one to each brigade in the army; the number is limited to thirty, and these in the most destitute places. The chaplain is also to discharge the duties of schoolmaster. The number in the navy is limited to twenty-four. Is there any violation of the constitution in these laws for the appointment of chaplains in the army and navy? If not, let us look at the history of chaplains in Congress. Here, as before, we shall find that the same practice was in existence before and after the adoption of the constitution. The American Congress began its session September 5, 1774. On the second day of the session, Mr. Samuel Adams proposed to open the session with prayer. I give Mr. Webster's account of it: "At the meeting of the first Congress there was a doubt in the minds of many about the propriety of opening the session with prayer; and the reason assigned was, as here, the great diversity of opinion and religious belief: until, at last, Mr. Samuel Adams, with his gray hairs hanging about his shoulders, and with an impressive venerableness now seldom to be met with, (I suppose owing to different habits,) rose in that assembly, and, with the air of a perfect Puritan, said it did not become men professing to be Christian men, who had come together for solemn deliberation in the hour of their extremity, to say there was so wide a difference in their religious belief that they could not, as one man, bow the knee in prayer to the Almighty, whose advice and assistance they hoped to obtain; and, independent as he was, and an enemy to all prelacy as he was known to be, he moved that Rev. Mr. Dushe, of the Episcopal church, should address the Throne of Grace in prayer. John Adams, in his letter to his wife, says he never saw a more moving spectacle. Mr. Dushe read the Episcopal service of the church of England; and then, as if moved by the occasion, he broke out into extemporaneous prayer, and those men who were about to resort to force to obtain their rights were moved to tears; and floods of tears, he says, ran down the cheeks of pacific Quakers, who formed part of that interesting assembly; and depend upon it, that where there is a spirit of Christianity, there is a spirit which rises above form, above ceremonies, independent of sect or creed, and the controversies of clashing doctrines." *That same clergyman* was afterwards appointed chaplain of

the American Congress. He had such an appointment five days after the declaration of independence.

On December 22, 1776; on December 13, 1784; and on February 29, 1788, it was resolved that two chaplains should be appointed. So far for the old American Congress. I do not deem it out of place to notice one act, of many, to show that that Congress was not indifferent to the religious interests of the people; and they were not peculiarly afraid of the charge of uniting church and State. On the 11th of September, 1777, a committee having consulted with Dr. Allison about printing an edition of thirty thousand Bibles, and finding that they would be compelled to send abroad for type and paper, with an advance of £10,272 10s., Congress voted to instruct the Committee on Commerce to import twenty thousand Bibles from Scotland and Holland into the different ports of the Union. The reason assigned was, that the use of the book was so universal and important. Now, what was passing on that day? The army of Washington was fighting the battle of Brandywine; the gallant soldiers of the Revolution were displaying their heroic though unavailing valor; twelve hundred soldiers were stretched in death on that battle-field; Lafayette was bleeding; the booming of the cannon was heard in the hall where Congress was sitting—in the hall from which Congress was soon to be a fugitive: at that important hour Congress was passing an order for importing twenty thousand Bibles; and yet we have never heard that they were charged by their generation of any attempt to unite church and State, or surpassing their powers to legislate on religious matters.

There was a convention assembled between the old and new forms of government. Considering the character of the men, the work in which they were engaged, and the results of their labors, I think them the most remarkable body of men ever assembled. Benjamin Franklin addressed that body on the subject of employing chaplains; and, certainly, Franklin will not be accused of fanaticism in religion, or of a wish to unite church and State. I give his words as reported by Madison.

*Debates in the Federal Convention, June 28, 1787.*

Dr. Franklin said: Mr. President, the small progress we have made after four or five weeks' close attendance, and continual reasonings with each other, our different sentiment on almost every question—several of the last producing as many noes as ayes—is, methinks, a melancholy proof of the imperfection of the human understanding. We, indeed, seem to feel our want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of government, and examined the different forms of those republics which, having been formed with the seeds of their own dissolution, now no longer exist. And we have viewed modern States all round Europe, but find none of their constitutions suitable to our circumstances. In this situation of this assembly, groping, as it were, in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate our un-

derstandings? In the beginning of the contest with Great Britain, when we were sensible of danger, *we had daily prayer in this room for divine protection.* Our prayers, sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? Or do we imagine that we no longer need his assistance?

"I have lived, sir, a long time, and the longer I live the more convincing proofs I see of this truth—that *God governs in the affairs of men*; and if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We have been assured, sir, in the sacred writings, that 'except the Lord build the house, they labor in vain that build it.' I firmly believe this; and I also believe that without His concurring aid, we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial local interests, our projects will be confounded, and we ourselves shall become a reproach and by-word down to future ages. And, what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing governments by human wisdom, and leave it to chance, war, and conquest.

"I therefore beg leave to move, that henceforth prayers, imploring the assistance of Heaven and its blessings on our deliberations, be held in this assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service."—*Elliott's Debates*, vol. 5, p. 253.

There certainly can be no doubt as to the practice of employing chaplains in deliberative bodies previous to the adoption of the constitution. We are, then, prepared to see if any change was made in that respect in the new order of affairs.

The first Congress under the constitution began on the 4th of March, 1789; but there was not a quorum for business till the 1st of April. On the 9th of that month Oliver Ellsworth was appointed, on the part of the Senate, to confer with a committee of the House on rules, and on the *appointment of chaplains.* The House chose five men—Boudinot, Bland, Tucker, Sherman, and Madison. The result of their consultation was a recommendation to appoint two chaplains of different denominations—one by the Senate and one by the House—to interchange weekly. The Senate appointed Dr. Provost, on the 25th of April.

On the 1st day of May Washington's first speech was read to the House, and the *first* business after that speech was the appointment of Dr. Linn as chaplain. By whom was this plan made? Three out of six of that joint committee were members of the convention that framed the constitution. Madison, Ellsworth, and Sherman passed directly from the hall of the convention to the hall of Congress. Did *they* not know what was constitutional? The law of 1789 was passed in compliance with their plan, giving chaplains a salary of \$500. It was re-enacted in 1816, and continues to the present time. Chaplains have *been appointed from all the leading denominations*—Methodist, Bap-

tist, Episcopalian, Presbyterian, Congregationalist, Catholic, Unitarian, and others.

I am aware that one of our petitioners might truly reply that the article was not in the body of the constitution, but was one of the amendments recommended by Virginia. This does not weaken the argument in favor of chaplains. In the convention of Virginia, which proposed amendments, James Madison, James Monroe, and John Marshall were members. All these men were members closely connected with the government. Madison and Monroe were members of Congress when the first amendment was adopted and became a part of the constitution. Madison was a member of the convention framing the constitution, of the convention proposing the amendment, and of Congress when adopted; and yet neither Madison nor Monroe ever uttered a word or gave a vote to indicate that the appointment of chaplains was unconstitutional. The convention of Virginia elected on its first day a chaplain—Rev. Abner Waugh—who every morning read prayers immediately after the ringing of the bell for calling the convention. No one will suppose that convention so inconsistent as to appoint their chaplain for their own deliberative assembly in the State of Virginia, and then recommend that this should be denied to the deliberative bodies of the nation.

The reason more generally urged, is the danger of a union of church and State. If the danger were real, we should be disposed to take the most prompt and decided measures to forestall the evil, because one of the worst for the religious and political interests of this nation that could possibly overtake us. But we deem this apprehension entirely imaginary; and we think any one of the petitioners must be convinced of this on examination of the facts. I have prepared a table showing the churches, ministers, members, and worshippers, in the leading denominations of Christians in this land. It was hastily made, and is doubtless imperfect. I shall append another table, which was published in the Christian Almanac; and any person who has the leisure may compare, and from both form a correct conclusion. The column of worshippers was made by taking from the census the list of church accommodations of each church. This, of course, makes no pretence to entire accuracy; but it is, comparatively, perfectly fair, because it assumes that all churches are filled with worshippers, and that this is the measure of them. It is the nearest and fairest approach to accuracy that I know how to make.\* Now look at that score of different denominations, and tell us, do you believe it possible to make a majority agree in forming a league to unite their religious interests with those of the State? If you take from the larger sects, you must select some three or four of the largest to make a majority of clergy, or laity, or worshippers. And these sects are widely separated in their doctrines, their religious rites, and in their church discipline. How do you expect them to unite for any such object? If you take the smaller sects, you must unite some fifteen to make a majority, and must take such discordant materials as the Quaker, the Jew, the Universalist, the Unitarian, the Tunker, and the Swedenborgian. Does any one suppose it possible to make these

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\* For tables, see end of report.

harmonize? If not, there can be no union of church and State. Your committee know of no denomination of Christians who wish for such union. They have had their existence in the voluntary system, and wish it to continue. The sentiment of the whole body of American Christians is against a union with the State. A great change has been wrought in this respect. At the adoption of the constitution, we believe every State—certainly ten of the thirteen—provided as regularly for the support of the church, as for the support of the government: one, Virginia, had the system of tithes. Down to the Revolution, every colony did sustain religion in some form. It was deemed peculiarly proper that the religion of liberty should be upheld by a free people. Had the people, during the Revolution, had a suspicion of any attempt to war against Christianity, that Revolution would have been strangled in its cradle. At the time of the adoption of the constitution and the amendments, the universal sentiment was that Christianity should be encouraged—not any one sect. Any attempt to level and discard all religion, would have been viewed with universal indignation. The object was not to substitute Judaism, or Mahomedanism, or infidelity, but to prevent rivalry among sects to the exclusion of others. The result of the change above named is, that now there is not a single State that, as a State, supports the gospel. In 1816 Connecticut repealed her law which was passed to sustain the church; and in 1833, Massachusetts wiped from her statute-book the last law on the subject that existed in the whole Union. Every one will notice that this is a very great change to be made in so short a period—greater than, we believe, was ever before made in ecclesiastical affairs in sixty-five years, without a revolution or some great convulsion. This change has been made silently and noiselessly, with the consent and wish of all parties, civil and religious. From this it will be seen that the tendency of the times is not to a union of church and State, but is decidedly and strongly bearing in an opposite direction. Every tie is sundered; and there is no wish on either side to have the bond renewed. It seems to us that the men who would raise the cry of danger in this state of things, would cry fire on the thirty-ninth day of a general deluge.

If there be no constitutional objection and no danger, why should not the office be continued? It is objected that we pay money from the treasury for this office. That is certainly true; and equally true in regard to the Sergeant-at-arms and Doorkeeper, who, with the chaplain, are appointed under the general authority to organize the House. Judge Thompson, chairman of this committee in the thirty-first Congress, in a very able report on this subject, said, that if the cost of chaplains to Congress were equally divided among the people, it would not be annually more than the two-hundredth part of one cent to each person. That being true, a man who lives under the protection of this government and pays taxes for fifty years, will have to lay aside from his hard earnings two and a half mills during his half century for the purpose of supporting chaplains in Congress! This is the weight of pecuniary burden which the committee are called to lift from off the neck of the people.

If there be a God who hears prayer—as we believe there is—we *submit, that there never was a deliberative body that so eminently*

needed the fervent prayers of righteous men as the Congress of the United States. There never was another representative assembly that had so many and so widely different interests to protect and to harmonize, and so many local passions to subdue. One member feels charged to defend the rights of the Atlantic, another of the Pacific coast; one urges the claims of constituents on the borders of the torrid, another on the borders of the frigid zone; while hundreds have the defence of local and varied interests stretching across an entire continent. If personal selfishness or ambition, if party or sectional views alone, bear rule, all attempts at legislation will be fruitless, or bear only bitter fruit. If wisdom from above, that is profitable to direct, be given in answer to the prayers of the pious, then Congress need those devotions, as they surely need to have their views of personal importance daily chastened by the reflection that they are under the government of a Supreme Power, that rules not for one locality or one time, but governs a world by general laws, subjecting all motives and acts to an omniscient scrutiny, and holds all agents to their just awards by an irresistible power.

In the provisions of the law for chaplains in the army, the number is limited, and these not to be granted unless for "most destitute places;" and then, for a very small salary they are to perform the double service of clergymen and schoolmasters. While every political office under all administrations is filled to overflowing; while the ante-chambers of the departments are crowded and crammed with anxious applicants, waiting for additions, or resignations, or death, to make for them some vacant place, it is of recent occurrence that only fourteen of the twenty posts for chaplains were supplied.

We presume all will grant that it is proper to appoint physicians and surgeons in the army and navy. The power to appoint chaplains is just the same, because neither are expressly named, but are appointed under the general authority to organize the army and navy, and we deem the one as truly a matter of necessity as the other. Napoleon was obliged to establish chaplains for his army, in order to their quiet while making his winter quarters in the heart of an enemy's country, and that army had been drenched in the infidelity of the French revolution. The main portion of our troops, though not in a foreign land, are stationed on the extreme frontiers, the very outposts of civilization; and if the government does not furnish them moral and religious instruction, we know, as a practical fact, that they will go without it.

It is said that they can contribute and hire their own chaplains. Certainly they can, and their own physicians and surgeons; but if we throw on them this additional burden, are we not bound to increase their pay to meet these personal expenses? We may supply them directly, with more economy and effect than we can do it indirectly. We trust that the military force of the United States will never be engaged in a contest, unless in such an one that devout men can honestly invoke the God of battles to go with our armies. If so, it will inspire fortitude and courage in the soldier to know that the righteous man is invoking the Supreme Power to succeed his efforts. If our armies are exposed to pestilential climates or to the carnage of the battle-field, we believe it the duty of government to send to the sick, and wounded, and dying,



that spiritual counsel and consolation demanded by the strongest cravings of our nature.

The navy have still stronger claims than the army for the supply of chaplains: a large portion of the time our ships-of-war are on service foreign from our own shore. If they are in the ports of other nations, the crews cannot be disbanded to worship with the people of those nations; and if they could, the instances are rare in which the sailors could understand the language in which the devotions are conducted. If you do not afford them the means of religious service while at sea, the Sabbath is, to all intents and purposes, annihilated, and we do not allow the crews the free exercise of religion.

In that important branch of service the government is educating a large number of youth who are hereafter to have the control of our navy. They are taken from their homes at a very early age, when their minds are not generally instructed, or their opinions formed on religious affairs. If the mature men can be safely deprived of such privileges, is it wise or just to deprive the youth of all means of moral and religious culture? Naval commanders have often desired to have their crews unite in devotions before commencing action. They have sometimes done it when there was no chaplain on board. One striking instance of this was in the naval action on Lake Champlain. On Sunday morning, September 11, just as the sun rose over the eastern mountains, the American guard-boat on the watch was seen rowing swiftly into the harbor. It reported the enemy in sight. The drums immediately beat to quarters, and every vessel was cleared for action. The preparations being completed, young McDonough summoned his officers around him, and there, on the deck of the Saratoga, read the prayers of the ritual before entering into battle; and that voice, which soon after rang like a clarion amid the carnage, sent heavenward, in earnest tones: "Stir up thy strength, O Lord, and come and help us; for thou givest not always the battle to the strong, but canst save by many or by few." It was a solemn, thrilling sight, and one never before witnessed on a vessel-of-war cleared for action. A young commander who had the courage thus to brave the derision and sneers which such an act was sure to provoke, would fight his vessel while there was a plank left to stand on. Of the deeds of daring done on that day of great achievements, none evinced so bold and firm a heart as this act of religious worship.

While your committee believe that neither Congress nor the army or navy should be deprived of the service of chaplains, they freely concede that the ecclesiastical and civil powers have been, and should continue to be, entirely divorced from each other. But we beg leave to rescue ourselves from the imputation of asserting that religion is not needed to the safety of civil society. It must be considered as the foundation on which the whole structure rests. Laws will not have permanence or power without the sanction of religious sentiment—without a firm belief that there is a Power above us that will reward our virtues and punish our vices. In this age there can be no substitute for Christianity; that, in its general principles, is the great conservative element on which we must rely for the purity and permanence of free institutions. That was the religion of the founders of the republic, and

they expected it to remain the religion of their descendants. There is a great and very prevalent error on this subject in the opinion that those who organized this government did not legislate on religion. They did legislate on it by making it free to all, "to the Jew and the Greek, to the learned and unlearned." The error has risen from the belief that there is no legislation unless in permissive or restricting enactments. But making a thing free is as truly a part of legislation as confining it by limitations; and what the government has made free, it is bound to keep free.

Your committee recommend the following resolution:

*Resolved*, That the committee be discharged from the further consideration of the subject.

*Tables referred to on page 5.*

Names.	Ministers.	Members.	Worshippers.	Churches.
Baptist .....	8, 018	948, 867	3, 130, 878	8, 791
Christian .....	1, 500	50, 000	296, 050	812
Congregational .....	1, 687	197, 190	795, 177	1, 674
Episcopal .....	1, 504	73, 000	625, 213	1, 422
German Reformed .....	260	70, 000	156, 932	327
Lutheran .....	663	163, 000	531, 100	1, 203
Mennonite .....	240	30, 000	29, 900	110
Methodist .....	6, 000	1, 250, 000	4, 209, 333	12, 467
Moravian .....	27	3, 000	112, 185	331
Presbyterian .....	4, 578	490, 250	2, 040, 316	4, 584
Roman Catholic .....	1, 081	1, 650, 000	620, 950	1, 112
Swedenborgian .....	35	.....	5, 070	15
Tunker .....	250	10, 000	35, 075	52
Unitarian .....	250	30, 000	137, 367	243
Universalist .....	540	.....	205, 462	494
Union .....	673	.....	213, 552	619
Jewish .....	.....	.....	16, 575	31
Friends .....	.....	.....	282, 823	714
Free .....	300	.....	108, 605	361
Dutch Reformed .....	289	32, 840	181, 968	324
Minor sects .....	287	.....	115, 347	325
	28, 203		13, 849, 896	36, 011

All the German churches (i. e., Lutheran, German Reformed, United Brethren, Evangelical Association, Moravian, Evangelical Church, Mennonite, Tunkers) have 2,377 ministers, 5,356 congregations, and 333,000 members.

Names.	Churches.	Ministers.	Members.
Methodist Episcopal.....	-----	3,716	629,660
Methodist South.....	-----	1,500	465,553
Methodist Protestant and others .....	-----	-----	81,000
Baptist, Regular .....	8,205	4,960	667,750
Baptist, Anti-Mission .....	2,059	924	69,328
Baptist, Free-will .....	1,249	1,076	55,323
Baptist, Campbellite .....	1,600	1,000	127,000
Baptist, minor sects .....	316	358	27,700
Presbyterian, { O. S.....	2,459	1,803	192,033
Presbyterian, { N. S.....	1,651	1,551	155,000
Associate Presbyterian .....	214	120	18,900
Associate Reformed .....	332	219	26,340
Reformed Presbyterian .....	47	29	5,300
Presbyterian, Cumberland .....	480	350	50,000
Presbyterian, others.....	490	310	44,000
Congregational, (Evangelical) .....	1,971	1,687	197,196
Reformed Dutch .....	276	289	32,840
German Reformed .....	261	273	69,750
Protestant Episcopal .....	1,192	1,497	67,550
Lutheran .....	1,604	663	163,000
United Brethren .....	1,800	503	67,000
Evangelical Association, (German) .....	190	300	17,000
Unitarian.....	244	250	3,000
Roman Catholic.....	966	1,026	1,231,300
Christian Connexion.....	1,500	1,500	325,000
Church of God.....	125	83	10,000
Mennonite .....	400	240	60,000
Friends and Quakers .....	714	-----	-----

INDIGENT INSANE.

[To accompany bill H. R. No. 7.]



MARCH 29, 1854.—Laid on the table and ordered to be printed.

Mr. DISNEY, from the Committee on Public Lands, submitted the following

REPORT.

*The Committee on Public Lands, to whom was referred the "bill making a grant of public lands to the several States and Territories of the Union for the benefit of indigent insane persons," have had the same under consideration, and ask leave to report:*

That they unite with the friends of the bill in an appreciation of the merits of the object to which the proposed grant is intended to be applied; and if those merits could alone determine the conclusions of the committee, they would most cordially recommend the passage of the bill. In the judgment of your committee, however, there are other considerations which demand attention before they can come to that conclusion. The general government is one of limited powers. At its formation the respective States, as separate but independent communities, were amply empowered to regulate and provide for all matters within their limits; but a sense of weakness, as against foreign powers, impelled them to a confederation, and the formation of a government competent to the general protection. To this end, and for this purpose, special powers were conferred upon it. But while the States conceded the authority which was deemed necessary to the ends for which it was formed, they each retained within themselves all the powers necessary to the independent management and control of matters not involving the interests of the citizens of the other States. Competent as they were to all domestic matters, they only sought to establish a government which should provide for the interests of the confederation in its aggregate capacity; and, jealous of their separate independence, the States reserved to themselves, respectively, all power not necessary to the general government for the end for which it was formed. This limitation of power in the hands of the federal government, except so far as specifically granted, denies to it all authority to act in relation to the domestic affairs of the several States, and has established the only solid foundation for the perpetuation of the federal union. Under this principle its limits may forever be extended and its safety preserved. Various, and even conflicting, habits, customs, and local interests in the different States will be protected by their legislatures, and are in no danger of being overridden by the federal government; and if each

keeps within its appropriate sphere, the prosperity of the States will be secured, and the interests of the Union will be enlarged. Such is the symmetry of our government, its very existence depends upon its severe adherence to the limitation of its duties. Within that it has no power but to bless; beyond it, it has no power but to ruin. This limitation is the anchor of our safety; when it fails, it will involve the ruin of the republic.

If the general government possessed the power to make grants for local purposes within the States, its action in that respect would have no limitation but such as policy or necessity might impose. Every meritorious object would have a right to demand it, and to such a refusal could only be justified by inability. Every local object, for which local provision is now made, would press for support upon the general government, and would create demands upon it beyond its power to meet, and of necessity it would be driven into the policy which would increase its means. As its expenditures are increased, the revenue must be enlarged, and the general government, by the adoption of the policy, would levy taxes upon the people of the Union for the support of the local interests of the States. If their expenditures should be unequally apportioned, the injustice of taxing a part for the benefit of others would soon cause the system to be overthrown. If they were equally distributed, it would be but an usurpation of the function of the States, unsustained even by the plea of economy. The patronage would be fatal to the independence of the States; with patronage comes the power to control, as consequence follows upon cause. If the policy is embarked in, what shall be its limits? Shall the merit of the object and the ability of the government be the boundaries of its action? To feed the hungry and clothe the naked, if within its competency, would in a moral point of view be quite as meritorious as any other act which the government could perform; but, if the constitution had granted power for such a purpose, would it be politic for Congress to make provision for the suffering poor throughout the Union? If either lands or money could be granted for the indigent insane, could they not, and ought they not, to be granted to the freezing and starving poor? If to one meritorious object, why not to another? Or shall the action of Congress in this regard be extended to every useful public and private purpose within the States? If not, where shall the line be drawn? If the principle be admitted, what shall limit its application?

Your committee have failed to perceive how they could be justified in recommending a grant from the general government in support of hospitals for the indigent insane, and in refusing one for any other object equally meritorious. The means of the general government are taken from the people; if you take from it the public lands, you must give it money in the stead; if you destroy its revenue from that source, you must increase it in some other. No more expensive mode could be devised to support local institutions than to make the federal government the agent to raise and distribute the means. With the States lies the power necessary to their management and control. With the States lies the power to secure the economical administration of the funds, and to determine the amount which prudence will allow to be expended *in their support*; and if these institutions are supported by means raised

by the authority of the States, no injustice can be inflicted upon the people of the other States. State provision, as between the States, would be just from necessity, and from interest it would be economical.

The appropriation asked for is in lands, but your committee can discover in this regard no difference between an appropriation in lands or one in money; the effect is precisely the same in both cases. If the revenue from the public lands is destroyed, the deficiency must be met by taxes on the people. The public domain belongs to all the people of the United States; their interest in it is common, and the government is but the trustee for the common benefit, limited in its action over it to those powers conferred by the constitution. It is a part of the public funds, and can be devoted to no purpose forbidden to the money of the federal government. If Congress impairs its value it must receive a compensation, or it will be faithless to its trust. The public good forbids the government from extorting from the purchaser's necessities an exorbitant price for the public lands; but, while the public welfare limits it to a reasonable action in this respect, the public rights demand that some compensation should be exacted, and such a reasonable revenue be secured from the public domain as, without being oppressive upon the purchasers, should be equitable toward those who do not obtain the enjoyment of the soil. Such are the principles, the recognition of which justice imperatively demands. As a landholder the government may legitimately bear a share of the burdens imposed to create an improvement which will enhance the value of its domain, and may contribute to that end; yet its aid must be limited within the extent which does not require taxation to effect it. It may, as a matter of power or right, contribute portions of the public lands to improve the value of the remainder; but even in this, sound policy and its duties towards the general welfare will limit it to a healthy and reasonable extent. Reasonable donations towards improvements which cause an increased value in the adjacent lands are consonant with a wise and just administration of the public domain. Such donations increase and do not impair the value of the trust; but a gift which reduces the value of the public lands is in violation of the beneficiary's rights. The donation of section sixteen for the support of the township schools was an inducement to purchasers, and enhanced the value of the adjacent lands, the sale of which indemnified the government for the donation which it made. So, too, the donation of the salines. The facilities for obtaining salt were among the first objects of the early settlers upon the public lands, and the donation of the salt springs and adjacent land, to cause their being worked, was a powerful inducement to the pioneers of the West. The grants to the new States upon their admission into the Union were upon conditions which more than indemnified the government. The swamp-land grant was justified, because it was to remove a nuisance which injured the public and the government as the proprietor of the adjacent lands; while the grants for internal improvements brought a direct pecuniary profit to the treasury.

Your committee are aware that a few instances can be found where the action of Congress has not been limited to the principles which we avow; but, *in our judgment, these instances warn us against them, as*

precedents of wrong. In extreme cases, the laws are silent, but the cases form no rule. In ordinary cases, when the precedent is wrong, it should be condemned. It is always an ungrateful task to refuse, but when duty demands it your committee feel that they dare not disobey. Our sympathies impel us to extend a generous support towards most of the objects for which donations of the public lands are asked. If our feelings could control, we should most cordially do all that their friends could desire; but we live under a government of laws, and the merit of the object cannot justify the appropriation of means not our own. Want seldom inquires into the right of plenty to give—its own necessities are its highest law. The ability of the general government naturally causes applications to it for assistance; and without inquiring into its right to comply with their demands, the needy press upon the government for support. To support local institutions does not come within the scope for which the general government was formed, and if it possessed the power, your committee can imagine no policy more unwise. The public domain is a source of revenue. In time of war, it is one of the most effective means upon which the country can rely; it will secure enlistments when money fails; and, in our opinion, we should indeed be careful before we destroy this important aid. The public lands are watched with a longing eye. Your committee have now before them, exclusive of the cases where there is a promise of compensation, applications for a grant of land to establish and support normal schools in each State, to educate young women as teachers; to grant land to support deaf, dumb, and lunatic asylums in the State of Wisconsin; to grant lands for the support of common schools in the different States; to grant the proceeds of the public lands for the same purpose; to grant land to each incorporated college and university in the United States; to grant land to establish juvenile reform schools in the principal cities of the Union; to grant, for the purposes of education, the unsold lands in the respective States which have been in market for a number of years; to grant to the old States large portions of the public domain; to grant land to support a Protestant university; to grant land to support a private military school; to grant the site of Fort Atkinson for purposes of education; and one party asks for a grant of land to enable him to carry on an iron foundry. To these may be added the applications to increase the list of soldiers to whom bounty land shall be given, amounting in the whole to an aggregate of something like three hundred millions of acres—equal to the whole amount of public lands which have been surveyed since the domain has been acquired. To this extent are the applications now. Shall they be encouraged to increase? Our land system has been well and happily devised; under it, injustice has been done to none, but all have prospered. It has furnished a moderate revenue, without preventing the settlement and improvement of the domain. New States have sprung up on it, whose prosperity is the admiration of the world. Industry has the price of the public lands within its reach, and the policy which made it has caused the wilderness not only to bud and blossom, but to bring forth fruit. The new States have been encouraged; the old States have had their interests secured; the spirit of our government has been obeyed, and its duties *kept within the limits of the law.*

Shall all this be disregarded, and the system be overthrown? For what?

If the prayers of the petitioners were granted, the prodigious quantities of land which would be thrown upon the market by competing vendors would deprive it of marketable value. The very gratification of their wishes would destroy the objects they have in view. To make the grants would be to render them of no avail.

Your committee conclude that Congress, without a promise of pecuniary compensation, has no power to grant portions of the public domain; and if it had, no policy could be more unwise than to grant it for the support of local institutions within the States. They, therefore, ask leave to report adversely to the indicated bill.

All of which is respectfully submitted.

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### MINORITY REPORT.

The undersigned, a member of the Committee on Public Lands, *dissents* from the arguments and conclusions of the foregoing report, against granting lands to the several States for the benefit of the indigent insane, being of opinion that Congress has the authority to do this, and would act wisely and properly in applying a portion of the public lands to so humane and commendable a purpose.

The objections to it, as *unconstitutional* and *inexpedient*, are believed to be equally untenable.

#### I.—*As to the power of Congress.*

This is given in express terms by the 3d section of article 4 of the constitution of the United States, viz :

"The Congress shall have power *to dispose of* and make all needful rules and regulations respecting the territory and other property of the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

More broad and comprehensive terms are not to be found in the English language than those which are employed to give this power to Congress.

Webster defines "*to dispose of*" as follows: "to part with; to alienate; to sell; to bestow; to give away; to transfer by authority."

Johnson's definition of the term "*to dispose of*" is, "to part with; to apply to any purpose; to transfer to any other person or use; to put into the hands of another; to give away; to put away by any means."

The existence of this power by Congress, to dispose of the public lands, is conceded, and has always been exercised. But it seems now to be claimed that it is so limited in the constitution as to prohibit a grant in this case; that while the public lands may be, constitutionally, disposed of, to a certain portion of the States, by grants for railroads, and the like, to dispose of them for other purposes, or to the other States, is unconstitutional; that they may be disposed of for almost any imaginary consideration, but cannot for purposes of great public interest.



Those who assert and assume this—for it is mere assertion and assumption—ought at least to be able to point out the provision of the constitution containing the prohibition.

It does not touch this question to talk long or learnedly about this being a government of limited powers, and that each department should be confined to the authority conferred. Here a power is expressly given to Congress; and the question is, whether it is general, or limited to a particular class of cases?

It is insisted, in reply to all objections of this kind, that the right of Congress to dispose of the public lands is conferred by words of a sense as general and comprehensive as any that could have been used, and without any limitation, except that contained in the same clause, that “nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.”

To understand this restriction it should be borne in mind that several of the old States—including New York, Virginia, Massachusetts, and Connecticut—had granted and ceded the public lands claimed by them to the United States before the adoption of the constitution, (North Carolina, South Carolina, and Georgia, did so afterwards.) And it was conditioned in these deeds of cession that the lands should be “a common fund for the use and benefit of all the States.”

The restriction in the constitution had reference to this, and was intended to enforce it. Its true meaning is to direct, that Congress, in disposing of the public lands, should have due regard to the rights of all the States, and dispose of them as their common property and for their common benefit. The grant now proposed to be made complies with this condition, for it is general and just to all the States.

The power of Congress to dispose of the public lands is absolute and unqualified, subject only to this restriction, (which has never been regarded, and is, in this case, inapplicable.) It may dispose of them by any means, or for any purpose, in regard to which it has power to legislate, by sale or gift—in fact, in any manner it deems proper.

If this power exists at all, (as is admitted,) it is a general and unlimited power of disposal. Neither the manner in which, nor the purposes for which, the public lands may be disposed of, are prescribed by the constitution. It gives a broad and a general power, (except the direction to regard the claims of all the States in its disposal.) For what purpose they should be granted is not a question of power, but of sound policy. This involves an inquiry, not into the right of Congress to make the grant, (for that it clearly has,) but into the expediency and propriety of making it for the purpose desired. It was presumed Congress would dispose of the lands in a proper manner, or this power would not have been entrusted to it. It could not have been safely given to any other department of the government; and it rests upon the same ground as the right of Congress to dispose of other property belonging to the United States. But how can Congress have the constitutional right to make grants to some of the States and not to the others?—or to grant lands to build a railroad or a university, and not an insane asylum? Those who contend for anything so absurd, ought to give a reason for it; yet none has been advanced.

II.—*As to precedents and practice.*

Congress has exercised the power of granting away and disposing of the public lands ever since the establishment of the government ; and its acts have been approved and sanctioned by the executive and judiciary departments under every President and in all the courts.

For more than fifty years—under the administrations of Jefferson, Madison, Monroe, Adams, Jackson, Van Buren, Tyler, Polk, and Fillmore—Congress has been constantly making grants of the public lands for almost every conceivable object and purpose. All these acts have been approved by the Presidents, and sanctioned and held valid and constitutional by the courts ; and it was never found out they were unconstitutional until now. If anything can ever be settled, this power of Congress must at this day be so regarded.

Among the various purposes for which these grants have been made are the following : For schools, for seats of government, for roads, for colleges, for salines, for public buildings, for seminaries of learning, for river improvements, for universities, for individuals, for companies, for corporations, for private claims, for military services, for internal improvements, for canals, for railroads, and for deaf and dumb asylums.

Grants have been made for deaf and dumb asylums to Connecticut, Alabama, Arkansas, and Florida. These cannot be distinguished, in principle, from grants for insane asylums.

Congress has not only made these grants often, but to large amounts. The amount of land granted away by Congress exceeds the amount that has been sold.

An official statement from the Commissioner of Public Lands shows that there has been granted to the States and Territories named, up to June 30, 1853, for railroads, internal improvements, schools, and deaf and dumb asylums, as follows :

To Ohio.....	1,970,530	acres.
“ Indiana.....	2,283,219	“
“ Illinois.....	4,096,848	“
“ Michigan.....	2,363,477	“
“ Wisconsin.....	1,934,464	“
“ Iowa.....	2,336,302	“
“ Missouri.....	3,472,391	“
“ Arkansas.....	3,623,827	“
“ Louisiana.....	1,332,124	“
“ Mississippi.....	2,097,754	“
“ Alabama.....	1,867,292	“
“ Florida.....	1,475,507	“
“ California.....	7,265,404	“
“ Minnesota.....	6,429,244	“
“ Oregon.....	12,186,987	“
“ New Mexico.....	7,493,120	“
“ Utah.....	6,681,707	“
13 States, 4 Territories—amount.....	68,913,937	“

There has also been granted to the States named for seats of government, public buildings, corporations, private claims, salines, swamp lands, &c., as follows :

In Ohio.....	8,863,617	acres.
In Indiana.....	1,792,526	"
In Illinois.....	2,146,444	"
In Missouri.....	3,589,751	"
In Alabama.....	240,643	"
In Mississippi.....	2,514,175	"
In Michigan.....	6,974,116	"
In Iowa.....	121,878	"
In Wisconsin.....	1,350,630	"
In Florida.....	5,805,394	"
In Arkansas.....	8,865,154	"
In Louisiana.....	11,864,180	"
<hr/>		
12 States—amount.....	54,148,514	"
Add grants before named.....	68,913,937	"
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Amount granted up to September 30, 1853.....	123,062,451	"
Amount sold up to same date.....	103,197,356	"
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Amount of grants over the sales.....	19,865,095	"
Add grants for military services.....	24,841,980	"
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Amount.....	44,707,075	"
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Amount of grants and sales.....	252,001,787	"

These grants (except for military services) are for the benefit of only a part of the States, and the old States have been wholly excluded.

The swamp lands granted to California are many millions of acres, but have not been returned, and are not included above.

Had the land granted to the land States and the Territories, 123,062,451 acres, been sold at government price, it would have amounted to \$153,848,054. The share of New York in this, according to representation, would have been \$21,693,824.

If there is any constitutional objection to the grants that have been made, it must be because they have been made exclusively for the benefit of a part of the States, and not for the benefit of all; and thereby the rights of the old States (which have been entirely excluded) have been not only prejudiced, but so far denied and defeated. This, if not unconstitutional, is certainly unjust. But that objection does not apply in this instance. The application is for all. Had it been only for the benefit of the land States, it is probable it would have met with a more favorable consideration.

The power of Congress to make the grant applied for cannot be denied, without first establishing that the constitution does not mean what *it says*, and that the Presidents have approved, and the courts have *enforced, unconstitutional laws* on this subject for the last fifty years;

nor without defeating, as unconstitutional and void, more than one half of the legislation of Congress in relation to the public lands.

### III.—*As to expediency.*

This application is for a most useful and praiseworthy purpose, in which all are interested; one that appeals directly to the best sympathies of the human heart, against the merits of which even its opponents say they have nothing to urge. Their objections arise from other considerations. They put in a plea of a want of power. That has been answered. They interpose an argument, that all manner of applications would be made if this were granted. This hardly merits a serious reply. All manner of applications have been made, and have been granted. The lands are being squandered, granted, and given away, with the most reckless and extravagant profusion. Among all these cannot one grant be made for the public good? Is it all required to be bestowed upon speculators and corporations? Besides, is not Congress competent to judge when grants should be made and when they should be denied? Are we to refuse proper applications for fear improper ones will be made?

The members of this committee reporting against this grant are prepared to report in favor of grants for railroads, at this session, sufficient to take more than 15,000,000 of acres of the public lands, in addition to all before granted. Where do they find authority to make those grants more than this one? Yet all these grants they regard as expedient and constitutional! The land all goes to the proper States, and for the proper purposes—therefore the grants are constitutional! They also supported the homestead bill. Was that expedient and constitutional, upon the principles now laid down in their report?

### IV.—*As to railroad grants.*

It is urged these are constitutional and proper, because nothing is lost by making them. If this were true, it is not perceived how it would affect the constitutional right to make them; that depends on the power of Congress to make the grants, (not whether they are wisely or unwisely made.) But nothing so often and so confidently asserted was ever more erroneous. Take, for example, the Illinois central railroad, as most favorable for those relying upon this argument. The grants for that road were as follows:

To Illinois.....	2,595,053	acres.
To Mississippi.....	737,130	"
To Alabama.....	419,528	"
Amount granted to that road.....	<u>3,751,711</u>	"

Reserved to be offered at double price :

In Illinois.....	1,223,921	acres.
In Mississippi.....	288,496	"
In Alabama.....	167,045	"

Amount to be offered at double price. .... 1,651,874 "

The land granted to the road, 3,751,711 acres, amounts, at government price, to \$4,689,639.

If all the reserved sections could be sold at double price, it still leaves a clear gift to this road of \$2,624,897. But the act only reserved these sections, and required them to be offered at the increased price before they were sold at the ordinary rate.

They were brought into market in July, 1852 ; and up to September 30, 1853, (one year and three months,) there had been sold in Illinois, at the double price, only 284,080 acres, and the amount over the ordinary price received was \$355,100, (and from this all additional expenses should be deducted,) to repay government for the grant or gift of land, to the amount of \$4,689,639—not one-thirteenth part as much. It is doubtful whether any railroad grant, made or to be made, under this admirable "lose-nothing" system, (for it has come to be a system,) will repay to government, including all additional expenses, one dollar in ten of the value of the land given to the road.

But when this argument is met by facts which disprove it, another is resorted to, that these railroad grants greatly increase the sales of the public lands. Again the facts disprove this also.

There was more land sold in 1836 than there has been sold for the last twelve years up to January 1, 1853, (the returns for 1853 are not yet all made.) Yet this railroad system (that is said so rapidly to *increase* the sales) had been in full operation for two or three of the last years. The lowest sales in any one year were in 1852, (less than 1,000,000 acres,) being the very year the reserved sections on the Central railroad were brought into market !

	Acres sold.
In the year 1836.....	<u>20,074,871</u>
1841.....	1,164,796
1842.....	1,129,217
1843.....	1,605,264
1844.....	1,754,763
1845.....	1,843,527
1846.....	2,263,731
1847.....	2,521,306
1848.....	1,887,653
1849.....	1,392,903
1850.....	1,405,833
1851.....	2,055,920
1852.....	894,773
Total for twelve years.....	<u>19,856,603</u>

One additional feature in these railroad grants should be noticed—that of doubling the price of about one-third as much land as is granted to the road, (that is, for six miles each side of the road, and granting fifteen miles each side,) of which not one-third, it is believed, is ever sold at the increased price.

This is wrong in principle, opposed to all the present course of legislation, which is to reduce the price of the lands, and even to give them away to actual settlers. It was never anything but an artful device to furnish an argument and excuse for the grants, has been of little real value, and cannot now be of any. It should be abandoned altogether. It is a tax upon the settlers on the public lands for the benefit of private companies, and unwise and unjust as a matter of public policy.

Grants to roads may induce settlers to locate near where they run; but they do not appear to have increased the aggregate amount of sales or settlements. It is immaterial where the purchases are made, if the amount is no greater than before. It would seem to be poor policy to give away nearly 4,000,000 acres, to induce settlers to purchase 200,000 or 300,000 acres on the line of the road, rather than elsewhere.

The constitutional right to make these grants, in preference to the one in question, should be rested on some better ground. Even *their* expediency depends upon the argument that the more we give the less we lose.

V.—*As to its being trust property.*

Again, it is objected to making this grant that government holds these lands in trust, and that it would impair the value of the property, and therefore be in violation of the trust. It would seem that this argument might be well applied to grants for the benefit of mere railroad companies, or similar grants, but not to this; because, if government holds these lands in trust, it is for the benefit of all the States, as their common property, and to be used and applied for their common benefit. It is held for this purpose, and no other; and so far as it is thus applied, it is not in violation, but in the faithful *execution*, of the trust.

Here it is asked to be applied for the benefit of the people of the United States—the *real owners*—for a public purpose, in which all are interested, according to their wishes, and in a just and equal manner.

It is submitted that the public lands can be granted for the benefit of all the States with at least as much propriety as it can be to a part of them, and that, too, to the exclusion of the other States; or with as much propriety for this purpose, as it can be granted for the benefit of corporations, whether to build railroads or for any other object.

Approving the object for which this grant is asked, and the manner in which it is proposed to be made, for the equal benefit of all the States, the undersigned is in favor of it, and recommends the passage of the bill herewith presented.

HENRY BENNETT.

The undersigned, members of the Committee on Public Lands, are in favor of the bill for the benefit of the indigent insane, and consent to have the same reported to the House, with a recommendation that it do pass.

W. R. W. COBB.

I. E. HIESTER.

SAM. CARUTHERS.



SAMUEL McKNIGHT.

[To accompany bill H. R. No. 319.]

APRIL 5, 1854.

Mr. HENDRICKS, from the Committee on Invalid Pensions, made the following

## REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Samuel McKnight, have had the same under consideration, and report:*

That on the 24th day of April, 1847, the petitioner enlisted in company B, of the 16th regiment of the infantry in the army of the United States, to serve during the war with Mexico, and was honorably discharged at the close of the war; that whilst the petitioner was in the service in the line of his duty, near Monterey, in Mexico, his eyes became diseased; that this disease was caused by the climate and the hardships of the service, and not by any fault on the part of the petitioner; that the disease has constantly been growing worse, and that he is now almost blind. The committee are well satisfied that his eyes cannot be cured, but that in a short time he will be entirely blind. These facts are established by the testimony of two surgeons of the State of Kentucky, and by the testimony of the captain and lieutenant of the company in which the petitioner served. The petitioner is a stone-mason, but has not been able to labor at his business since his return from Mexico. His money has been expended in securing surgical treatment for his eyes. He is now wholly disabled, and destitute. The committee beg leave to report a bill for his relief, and recommend its passage.





WILLIAM WALLACE.

[To accompany bill H. R. No. 320.]

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APRIL 5, 1854.—Read twice and committed to a Committee of the Whole House to-morrow

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Mr. HENDRICKS, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom were referred the papers in the case of the claim of William Wallace, of the State of Illinois, for a pension, have had the same under consideration, and report :*

That the petitioner served as a corporal in Captain Whiting's company, of the 23d regiment of United States infantry, from the 26th day of February, 1813, during the war of 1812. That on the 25th day of July, 1814, at the battle of Bridgewater, he was wounded in his left thigh, by a musket-shot ; that he was carried from the field and remained in the hospital for several months ; that the ball was not taken from the wound, but remains in the limb at this time, and that the injury has within a few years so increased, as three-fourths to disable him from obtaining his subsistence by manual labor. These facts are established by the testimony of William Lichler, who served in the same company with the petitioner, and was with him when wounded, and who attended upon him in the hospital for two weeks after he was so wounded ; and by the testimony of Thomas and Elizabeth Cromwell, who have known him from the time of his discharge from the army ; and by the certificates, given under oath, of Oliver Everett and J. B. Gregory, who are certified to be surgeons reputable in their profession.

The petitioner made application at the Pension Office, but was refused a pension, because he could not produce the testimony of a commissioned officer, or of more than one private of the company in which he served, to establish his claim, which was required under the law and regulations governing that office. The committee report a bill for his relief, and recommend its passage.



GEO. M. BENTLEY.

[To accompany bill H. R. No. 321.]

APRIL 5, 1854.

Mr. HENDRICKS, from the Committee on Invalid Pensions, made the following

## REPORT.

*The Committee on Invalid Pensions, to whom were referred the papers in the case of the claim of George M. Bentley, of Indiana, for a pension, have had the same under consideration, and report :*

That the said Bentley was a private in company H in the 3d regiment of Indiana volunteers, and in said company served in Mexico during the war with that country ; and with his company fought gallantly at the battle of Buena Vista. During the first part of the month of November, 1846, the said regiment was encamped near Matamoras, upon the Rio Grande. On or about the 10th day of that month said Bentley, with the written permission of the colonel of the regiment, went into the city of Matamoras, and whilst there, by accident, sprained his right ankle. Upon his return to camp in the evening his ankle was swollen, and he was so disabled by lameness as to be unable to perform military duty for "a considerable length of time." Before the limb was wholly restored he returned to the discharge of his duty ; the swelling returned, and continued until incurable ulcers broke out upon the limb. The said Bentley is now wholly disabled from providing for himself and his family by manual labor.

Before entering the service of the United States the said Bentley was a sound and very robust man. Whilst in the service he was temperate and very attentive to his duties. Samuel McKenzy, the 1st lieutenant, in his testimony under oath says, "the said George M. Bentley was always present at roll-calling and parade ; and that his character for morality, promptness, and honesty, was unexceptionable as a soldier ; that during the encampment of the company at Matamoras it became necessary, for the want of rations, to grant permits to the soldiers to go to Matamoras to draw their rations, and that the permit which he received was to obtain his rations within the city, to the best of my knowledge."

The facts in this case are established by the testimony, given under oath, of Samuel McKenzy and Charles A. Shank, the 1st and 2d lieutenants of company H, and of Samuel D. Day and Lewis McAllister, surgeons, certified to be reputable in their profession. This claim was submitted to the Pension Office and rejected, for the reason that there is not

the testimony of any person who was immediately present when the injury was first received. The testimony of Lieutenants McKenzie and Shank satisfactorily establishes that Bentley properly, and in the line of his duty, went into the city of Matamoras, and that when he returned to camp his right ankle was swollen from a sprain ; that he was lame and disabled ; that before the swelling and soreness were removed he returned to duty, and that incurable ulcers came upon the limb and permanently disabled him.

The committee report a bill for his relief, and recommend its passage.

J. C. BUCKLES.

[To accompany bill H. R. No. 323.]

APRIL 5, 1854.

Mr. GREY, from the Committee on the Post Office and Post Roads,  
made the following

## REPORT.

*The Committee on the Post Office and Post Roads, to whom was referred the petition of J. C. Buckles, of Louisville, Kentucky, make the following report:*

That the memorialist states he was, during the years 1847 and 1848, the mail contractor for steamboat service between Louisville, Kentucky, and Shawneetown, Illinois—route No. 5005—one hundred and fifty-six miles, three times per week and back, for the annual compensation of \$4,560, supplying seven post offices on the Kentucky side of the Ohio river; that the people on the Indiana side were dissatisfied, and petitioned that they were equally entitled to the river mail supply as those of Kentucky.

After a correspondence with the Postmaster General, the mails were, by direction of the postmaster at Louisville, delivered to the contractor with instructions to supply fifteen additional offices, including offices in Indiana, and extend the route to Paducah, Kentucky, making it about three hundred and fifty miles in length. This additional service was performed by Mr. Buckles about six months before a positive price of compensation was agreed on, (ending in June, 1848, and admitted to have been regularly performed.)

For this service Mr. Buckles has received no compensation, because no law existed authorizing payment for services rendered prior to a positive agreement with the Postmaster General for its performance.

The memorialist claims for this six months' extra service the pro rata compensation of his contract on route No. 5005, which, with the increased distance and number of offices, he estimates at (\$5,130) five thousand one hundred and thirty dollars.

The memorialist also claims (\$1,411) one thousand four hundred and eleven dollars, which was deducted from his contract-pay on route No. 5103, from Louisville to St. Louis, for not delivering the mails in schedule time.

It is evident, from the papers in the case, that the contractor made great efforts to comply strictly, but was prevented from doing so by low water, fogs, ice, and other causes entirely beyond his control.

The committee find the fact of the transportation of the mails, for the six months previous to June, 1848, from Louisville to Paducah, as stated by memorialist, which was afterwards numbered route 4077. They also find that Mr. Buckles proposed to supply seven additional offices in Indiana for (\$3,200) three thousand two hundred dollars per annum, which was not acceded to by the Postmaster General; and that in June, 1848, under peculiar and forcing circumstances, he accepted and entered into a contract for that route (No. 4077) at the unusually low compensation of \$3,000 per annum.

It is, therefore, recommended that he be allowed (\$1,500) one thousand five hundred dollars for that six months' service on the route for which the department afterwards allowed him by contract \$3,000 per annum. It is also recommended that the contractor be allowed \$750 for the \$1,411 deducted from his contract pay on route No. 5103.

The committee find that it is and has been the custom of the department, on steamboat routes, to pay for "mail messenger service" performed in carrying the mails to and fro between the boat and the post offices on these routes. For that mail messenger service, during those six months, Mr. Buckles has never been paid, and for which the committee recommend an allowance of (\$406) four hundred and six dollars, which appears to be the amount actually paid out by him.

For the six months' service .....	\$1,500
For mail messenger service, &c.....	406
For deductions from his contract price.....	750
For mail messenger service on rote No. 5103.....	350
<b>Total.....</b>	<b><u>3,006</u></b>

For which sum the committee have authorized a bill to be reported.

McATEE & EASTHAM.

[To accompany bill: H. R. No. 324.]

APRIL 5, 1854.

Mr. GREY, from the Committee on the Post Office and Post Roads,  
made the following

REPORT.

*The Committee on the Post Office and Post Roads, to whom was referred the  
petition of McAtee and Eastham, respectfully report:*

That the petitioners entered into two contracts with the Post Office Department to convey the mail from Louisville, Kentucky, to St. Louis, Missouri, a distance of two hundred and sixty-eight miles, one commencing 1st of July, 1846, and the other April 15, 1847, both to terminate the 30th of June, 1850, for the annual compensation of \$20,399 40.

At the same time, Tallmadge & Sullivant became the contractors for carrying the mail from Columbus to Dayton, Ohio, and Peter Campbell for three several routes from Dayton to Indianapolis, from Indianapolis to Terre Haute, and from Terre Haute to St. Louis.

All these routes were for daily service in four-horse post coaches. McAtee & Eastham's route was intended for the ordinary mail from Louisville to St. Louis, while the routes of Tallmadge & Sullivant and Peter Campbell were constructed with the special view of conveying more directly and in less time the great eastern mail, which passed over the Cumberland road and through Wheeling to Columbus, Ohio.

A large proportion of this latter mail was thrown upon the route of McAtee & Eastham, and this, notwithstanding their earnest and repeated complaints and remonstrances, from different points of connexion by cross lines, from one route to the other, namely, Springfield, Madison, and Terre Haute, whenever the quantity of the whole was such as to make it impracticable for the contractors on the direct route to convey it.

The postmaster and assistant postmaster at Louisville estimate the quantity of mail matter so diverted from its proper route and thrown upon that of the petitioners, at from five to six canvass sacks on the average daily; the postmaster at Vincennes, at about eight daily, although he has seen as many as twenty at one time; the late postmaster at Vincennes, at from four to five sacks, although, on one occasion, three tons were turned aside at Terre Haute and brought down the Wabash river, and put on the route of the petitioners at Vincennes; the postmaster at St. Louis estimates the quantity at one large leather



bag, and from six to fifteen canvass sacks, and states that he had frequently written to the department of the great injustice done to the petitioners. He also states that the mail so improperly thrown on them exceeded in weight that of their ordinary and proper mail some five or six hundred pounds each trip. C. T. Pope, the special agent of the department, sent to inquire into the exact state of the case, as between the different routes, certifies that he found there were at least eight canvass sacks alone so diverted and carried daily, and that the additional matter so conveyed by the petitioners was three or four fold, on the average, that of their regular and proper mail.

The petitioners have filed the affidavits of their agents at Louisville and Vincennes, to show as well the fact and quantity of this extra mail, as that to a great extent it excluded passengers, and that the petitioners suffered otherwise in the loss of about one hundred horses, the breaking of their stages, harness, &c.

On the 28th February, 1848, the petitioners addressed a letter to the postmaster at Louisville, begging him to interfere with the postmasters at Columbus and at other points from which the evil arose, and stating that the mail thus thrown on them required a six-horse coach, while the contractors to whom it properly belonged carried it one-half the time on horseback. On the 25th December, 1848, they made the like remonstrance to the Post Office Department, and offered, if obliged to carry the additional mail, to do it for six thousand dollars per annum. The department appears then to have written to Mr. Campbell upon the subject, but no reply from him was furnished, and on the 2d August, 1849, it appointed Mr. Pope, then and now a clerk in the department, to proceed, as before stated, to the ground, and inquire into the cause of the difficulty. Mr. Pope was also instructed to inquire into the propriety of transferring the mail to the route of the petitioners, and with this view to ascertain whether the speed of their route could be increased, and for what sum they would perform the additional service. In order to obtain relief and some additional remuneration for the extra labor, the petitioners then made a new proposition to the department, offering to increase their speed twelve hours, and to perform the additional service for the additional sum of eight thousand dollars per annum. The transfer was, however, not ordered, for the reason, as the Postmaster General states, that the regular lettings for new contracts were then near at hand, and it was deemed inexpedient to make a change to operate for so short a period. But the inquiry instituted by the department had the effect of giving a right direction to the mails, and from the 1st of January, 1850, no claim is made by the petitioners for the extra mail so carried.

It is admitted, on all hands, that the transportation of this additional or eastern mail did not belong to the route of the petitioners, and was not required by the terms of their contracts. The Postmaster General, in his report of the 3d of March, 1851, to the honorable Mr. Burke, a member of the Committee on the Post Office and Post Roads of the last Congress, states, in speaking of the proposals made for carrying the great eastern mail on the different routes, that "the department selected the upper one by Indianapolis, Terre Haute, and Vandalia, because *the bidders on this line offered to deliver the mail in St. Louis seven-*

teen hours in summer and twelve hours in winter earlier than it was alleged it could be done by way of Louisville and Vincennes, and contracts were accordingly made for the transportation of the mail in question on the upper route, from the 1st July, 1846." In the instructions addressed to C. T. Pope, the special agent of the department to inquire into the state of the case, the department informs him that "the contractors from Louisville to St. Louis are not under obligations to transport the great eastern mail;" and the said special agent certifies that upon his return to Washington, he conversed with the acting Postmaster General (the Postmaster General himself being absent from Washington) "upon the subject of the newspaper mail having been transferred from Mr. Campbell's route to McAtee and Eastham's without authority from the department, when Major Hobbie admitted that McAtee and Eastham were performing service that could not be required of them, and that they were entitled to relief." In this opinion the committee concur. It is proved that the petitioners were energetic and zealous contractors, and faithfully performed both their proper and the extra service devolved on them, under circumstances of great difficulty, at considerable loss and sacrifice.

There being no controversy about the facts of the case, it being proved and admitted that a great portion of the eastern mail was thrown upon and carried by the petitioners which they were not bound to carry; that, in consequence of such carriage, passengers were excluded from their stages, and their stock broken down and injured; and it being equally conceded that they are entitled to remuneration, the only real difficulty in the case is to arrive at the just and fair measure of such remuneration. It will be recollected that their regular annual compensation was \$20,399 40; and the petitioners allege that the extra mail carried was more than double the quantity of their proper mail, and claim an amount at least equal to their contract pay. The witnesses differ somewhat in respect to the quantity of extra mail carried, but they all agree that it was much greater than the regular and proper mail; and if the compensation provided by the contract for the proper mail were to be assumed as the basis of compensation for the extra mail, the proportion, according to the evidence, would give to the petitioners an equal amount of compensation or more. It has been shown that McAtee and Eastham offered to perform the identical service for the additional compensation of \$6,000, and subsequently to perform it with an increase of speed for the sum of \$8,000 per annum. It appears from the report of the Postmaster General of March 3, 1851, before referred to, that under the mail arrangement which commenced July 1, 1850, the eastern mail was put on the route from Louisville by Vincennes to St. Louis, and that J. N. Eastham, of the late firm of McAtee and Eastham, became the contractor for the annual compensation of \$22,138, or only \$1,768 60 more than the compensation the late firm had received for the ordinary mail during the preceding contract term of four years; and it appears that again, within a short time past, the eastern mail has been restored to the upper route, and an additional sum has been allowed therefor by the department of near \$14,000 per annum. It is alleged by the petitioners that the offers made by them of \$6,000 and \$8,000 were under pressure of the circumstances in which they were placed, and for the purpose of obtain-

ing compensation, although inadequate, for a service which was forced upon them, and for a failure to perform which they were apprehensive the Postmaster General might take away their contracts. In relation to their offer to convey the eastern mail in addition to the former mail for only \$1,738 60 more than their former pay, they allege that the roads had been greatly improved during the time of the former contract, which fact appears from the report of the special agent of the department. They further allege that they relied upon the canvass sacks being sent by water, as recommended by the postmaster at Louisville, whenever the roads should be impracticable; that having established their stands and provided their stock, they would have sustained great loss in disposing of them if the routes had been taken by rival bidders; and lastly, that having the pay in hand as fast as earned, and knowing certainly what service they had to perform, they could make the necessary preparations in advance, and thereby avoid the losses of stock by being overladen at particular times, or the losses of buying and selling as changes in the service required.

From a careful consideration of the subject, the committee have concluded to recommend the allowance of \$6,000 per annum from July 1, 1846, to January 1, 1850, as a compensation for the extra service the petitioners performed, and for the expense, trouble, and loss, it involved.

GRAHAM AND FINNALL

[To accompany bill H. R. No. 325.]

APRIL 5, 1854.

Mr. McDougall, from the Committee on the Post Office and Post Roads, made the following

REPORT.

*The Committee on the Post Office and Post Roads, to whom was referred the memorial of Messrs. Graham & Finnall, praying relief on account of the abandonment of certain mail contracts by the Postmaster General, report :*

That in October, A. D. 1847, the Richmond, Fredericksburg, and Potomac Railroad Companies refused to transport the mail of the United States without an increased compensation, and demanded a rate of compensation greater than that for which the Postmaster General was authorized to contract by law. The Postmaster General proceeded to advertise for proposals to carry the mails between Washington and Richmond by post coaches, and proposals were made, accepted, and contracts entered into for the transportation of the mails between the points named—one contract for the mail between Washington and Fredericksburg, and one for the mail between Fredericksburg and Richmond—at the aggregate sum per annum of \$13,000. The contracts were taken by the memorialists, and were to commence the 10th of December, 1847, and to expire on the 30th of June, 1851, making the term of service nearly three years and seven months. The contracts were taken with the understanding and with the just expectation that the full term of service would be enjoyed, and with this expectation the contractors were induced to incur extraordinary expenses in stocking and opening a route upon brief notice, and at the commencement of winter.

The fact that the contractors had good reason to understand that the contract would not be abandoned, appears from the statement of the Postmaster General, Hon. Cave Johnson, an extract from which is hereinafter made. It appears, however, that within the first year of the service the Postmaster General succeeded in effecting a satisfactory contract with said railroad companies, and in consequence thereof, on the 30th November, 1848, he gave notice to the contractors of the abandonment of his contract with them, to take effect the 4th of December, 1848. Thereupon the said contractors called upon the Postmaster General for compensation for their extraordinary losses, and his reply is contained in the *extract following :*

"I am not of opinion that the law would justify the Postmaster General in making any additional payment, whatever there might be of equity in the circumstances attending it. The contract was made at a time when the railroad threw off the mails because they were refused the sum demanded by them beyond what the law authorized to be paid.

*"There was but little time for preparation; the services to commence in December, and under circumstances which might well have induced them to believe they would have enjoyed the full term contracted for."*

"A contract had been made with the bay boats which was to last the same time, and was made irrevocable, and whilst that service continued the coach line would have been necessary. After having made such extensive preparations under such pressing circumstances, to have their contract discontinued before the close of their first year, with all their stock and coaches on hand, would necessarily have produced considerable loss."

In this statement of the Postmaster General the opinion is distinctly expressed, that it would be just to give additional and equitable indemnity to the contractors, who are the present memorialists, but that he had no legal power to afford the relief.

It appears, particularly from the report of the Postmaster General for the years 1847-'48, that the course adopted by him in making these contracts and securing this service secured a great and permanent advantage to the Post Office Department, and enabled that officer to enforce his own terms, while, for the period of service by the contractors, it was a great saving to the government. These considerations, while they give no right or claim to the memorialists, yet serve to show the reasons why extraordinary efforts were required to start and maintain the route, and why extraordinary losses might well have attended the abandonment of the contracts.

It appears from the accounts rendered that the contractors, in and about the execution of the contract, expended the sum of \$15,031 69 over and above their personal expenses in and about their business, and over and above all charge for their own time or services. And it further appears that their receipts, estimating all receipts chargeable against their disbursements, amounted to the sum of \$13,125 54, and that said contractors suffered a clear loss of the balance, over and above their loss in personal expenses, time, and service.

If, from the peculiar character of this case, the memorialists are entitled to any indemnity—and your committee think them so entitled—then they should at least receive a fair indemnity for their actual losses which are estimated by your committee at the sum of three thousand dollars, and they report a bill accordingly.

AMENDMENTS TO THE DEFICIENCY BILL.

[To accompany bill H. R. No. 271.]



APRIL 6, 1854.

Mr. PHELPS, from the Committee of Ways and Means, made the following

REPORT.

*The Committee of Ways and Means, to whom were referred the amendments of the Senate to bill No. 271, entitled "An act to supply deficiencies in the appropriations for the service of the fiscal year ending the 30th of June, 1854," beg leave to report:*

That the House of Representatives concur in the 1st, 2d, 3d, 4th, 6th, 7th, 8th, 9th, 13th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d, 23d, 27th, 28th, 29th, 30th, 31st, 32d, 33d, 34th, 35th, 44th, 45th, 46th, and 47th amendments of the Senate.

That the House of Representatives concur in the 38th amendment of the Senate with an amendment, viz:

*Page 22.*—Strike out the whole embraced in the 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d, 23d, and 24th lines, and insert in lieu thereof the following: *And that the period limited for the appointment of commissioner, surveyor, and chief astronomer, by the act of May 15, 1850, shall be and the same is hereby extended to the 30th of June, 1855.*

That the House of Representatives concur in the 39th amendment of the Senate with an amendment, viz:

*Page 23.*—After the word "maps," on 1st line, strike out the words "views, sections, and natural history."

That the House of Representatives concur in the 43d amendment of the Senate with an amendment, viz:

*Pages 23 and 24.*—Strike out the whole embraced in the last two lines of page 23 and the first ten lines of page 24, and insert in lieu thereof the following: *That the First Comptroller of the Treasury be and he is hereby directed to examine the claims presented by certain counties of the late Territory of Iowa for expenses of the United States district court, which were paid by said counties prior to the admission of said Territory into the Union as a State; and if, upon such examination, he is satisfied that prior to said time the said counties have paid money which, in accordance with the instructions of the First Comptroller of the Treasury, dated 19th of December, 1843, as construed in the report of said First Comptroller to the Secretary of the In-*

*terior under date of 13th of October, 1853, in reference to said subject, should have been paid by the marshal of the United States for said Territory, he is directed to audit and settle the same.*

That the House of Representatives concur in the 51st amendment of the Senate with an amendment, viz:

*Page 27.*—Strike out all after the word "him," in the 11th line of said amendment.

That the House of Representatives non-concur in the 5th, 10th, 11th, 12th, 14th, 24th, 25th, 26th, 36th, 37th, 40th, 41st, 42d, 48th, 49th, 50th, 52d, and 53d amendments of the Senate.

TERMS OF TREATIES HEREAFTER TO BE MADE WITH  
CERTAIN TRIBES OF INDIANS.

[To accompany bill H. R. No. 210.]

APRIL 7, 1854.

Mr. ORR, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred House bill No. 210, defining the terms on which treaties shall hereafter be made with certain tribes of Indians, and for other purposes, report:*

That they have given the bill that consideration which its novelty and importance merit, and have determined with unanimity to commend it to the favorable action of the House. There is much in the history of the aborigines of the western continent to challenge the investigation of the philosopher and to excite the warmest sympathy of the philanthropist. The rapid decay of this noble race of native Americans should arrest the attention of the statesman, and some policy be adopted to save the remnant of this once proud and powerful people from annihilation. It would be prompted by considerations of mere humanity; but when we recur to the first discovery of the New World by Columbus—an event which has exercised so potent an influence in the history of our race; when we remember the progress of its early settlement, and the kind hospitality our ancestors enjoyed in the rude wigwams of the red men of the forest, gratitude alone imperiously demands that we should now spare his posterity an extinction which our policy towards them is hastening with certainty. Your committee entertain a sanguine hope that the policy shadowed forth in the bill may stay that destruction which our former system is rapidly accomplishing.

It is proposed to extend it, as an experiment, to those tribes who have heretofore been removed from the States to west of the Mississippi, and who are now located in the projected Territories of Kansas and Nebraska, as also to the Osage and Kansas tribes, who are indigenous, but who have conveyed heretofore most of their lands to the United States, reserving only a small portion of their once extended possessions, on which they now reside.

If the experiment succeeds with the emigrated tribes, some of whom already have a partial knowledge of agriculture and the civilization of



the whites, it can be extended, as settlements progress westward, to the wild tribes who now have no experience in tilling the soil, and who rely exclusively upon the chase for the means of subsistence.

The present desolate condition of most of the emigrated tribes west of, and contiguous to, Missouri and Iowa, is a melancholy memorial of the sad failure of our misjudged efforts to civilize this fated race.

Enlightened philanthropy now suggests an abandonment of our former system, and the institution of a new one which will alienate the Indian from the precarious fortunes of the chase, and attach him to the more stable and happy pursuits of agriculture.

In their new homes they have been disappointed in the permanent and abundant supplies of game furnished by the forests and prairies of the West. When they removed far towards the setting sun, and abandoned the wigwams and graves of their fathers, we told them they would get beyond the reach of the vices, deceptions, and oppressions of bad white men, and that the Great Spirit they revered would bounteously supply them abundantly with the deer, elk, and buffalo. Their tastes and habits made them yield a willing ear to the stories which we told them of this promised land. Their hearts saddened, doubtless, when they turned and gazed for the last time on their native heath, and still they were cheered in the hope of a bright future, to be realized in the stillness of that wild to which they were treading their way.

The policy towards the Indians, when adopted, seemed wise and humane. Its authors never anticipated the rapid progress of the extension of our settlements and population westward. It was supposed the Mississippi would, for many long years, mark the western confines of this Union, and present a barrier to western expansion not to be overcome. Soon, however the illusion was dissipated; for the sturdy pioneer leaped the rolling flood of the "father of waters," and began to fell and conquer the forests on the western slopes of its great valleys. In a few brief years a tier of States was formed "over the waters;" and then it was confidently believed that the broad plains and prairies, mountains and valleys, westward to the Pacific, would only be trod by the wild beasts of the forest and his natural enemy, the red hunter. A few more years, however, demonstrates the impotency of the most sanguine imagination to fix limits to our march westward. The acquisition and settlement of California and Oregon has created the necessity of converting much of the Indian wilderness into a great highway and thoroughfare. Not less than seventy-five thousand of our citizens annually traverse the Indian country on their journeyings to and from the Pacific coast. The red man is no longer permitted to roam the wilderness free from the baleful presence of the hated pale-face. He sees the buffalo driven farther and farther from his lands, his lodges, and his wigwams. He finds that the annual slaughter of this noble animal for his own subsistence, that of the white caravans that dot and enliven the plains, and for the robes to supply the wants of civilized and savage life, amount to upwards of four hundred thousand.

Unforeseen circumstances, such as no human foresight could have

anticipated, have defeated the great object sought to be attained by the removal of these tribes. Want, we may justly say famine, is griping at their heels. The rapid destruction of the buffalo is exhausting the only larder from whence they draw their support; the broad prairie yields them nothing but game, which is now taken only by labor, toil, and privation, and, when found, its quantity is so meagre as to rather tantalize than appease the dreadful gnawings of hunger.

Some of the tribes on the frontiers of Missouri, when they leave their lodges in the spring and fall to enter upon the precarious hunt for food, traverse several hundred miles of foodless desert before reaching their harvest-field—the herds of buffalo. Very soon they will cease to gather a harvest, for the buffalo will only be known in the natural history of a past age.

An increasing emigration and settlement along these great highways, and the large number of laborers and employées on the Pacific railroads, soon to be constructed, will destroy all the game supporting the Indian; and what will be his fate? If he should rob and murder to procure food, that his broken spirit and tortured body may be postponed a dissolution, should it excite surprise? And if justice required expiation for the crime, would not even a callous judge melt in tears of pity when gaunt famine pleads its justification for the deed?

When the buffalo is exhausted, the small game will feed them but a very brief season. Having neither breadstuffs nor vegetables, with nothing but meat to subsist upon, the ordinary demands of nature would not be appeased by less than from five to ten pounds per day. The deer is already growing scarce, and it cannot be depended on to subsist the Indians when the buffalo is gone.

It is idle, then, to look longer to the chase as a means of support for the Indian tribes. They are reduced to one of three alternatives—either to starve, plunder, or labor.

Humanity revolts at the prospect of perishing for food in a country where “old mother earth” so generously rewards the labor of the husbandman; but the second is violative of every social and moral duty, and its perpetration must bring ignominious punishment. The adoption, by his own free choice, of the last alternative should, if possible, be secured; and it is the solemn duty of Congress, by its legislation, to aid this consummation for the benefit of its wards, and thereby discharge its fiduciary trust to the Indians, now weak and powerless. It can only be done by giving to the red man an incentive to labor. Your committee are quite confident the result will be approximated by the passage of the bill under consideration. It suggests the general provisions of treaties to be hereafter negotiated with the Indians. Much of the mere detail of the plan is to be supplied in the stipulations of the treaties, and in such rules and regulations as may be adopted by the President of the United States to give the system efficiency. It contemplates the abrogation of their tribal existence, and gives to every member of the band an independent personal and political individuality, by changing the arbitrary will as law of chiefs and sachems for the laws of the United States and the protection to life and property which they afford. The council fires are extinguished, and appeals for

justice are addressed to the courts and legislatures rather than to the council-house. It gives him a permanent homestead, in quantity dependent on the number in the family, not to exceed in any event one section of land, by a higher and more stable title than mere occupancy. His "lodge" is converted into a dwelling, and becomes "his castle," protected from unlawful invasion. His affections and the affections of his children will entwine themselves around its enclosures, and the wild romance of a roving life will be dissipated. When he sees his little boys and girls growing up in that peaceful and happy home, it will stimulate him to industry. They must be fed and clothed and educated, and this will encourage his thrift and economy to meet these requirements of civilized life. His earnings will be measured by his own industry, and dispensed by his own volition. When he sows the seed he will feel assured that he will not be molested in reaping the harvest. Fierce cruelty and cold neglect will no longer be practised against his wife and his children. His kindness will cherish and his affections command them.

If sobriety and industry mark his conduct for a period of two years after entering upon and cultivating the homestead reserved to him by the bill, he is elevated in the scale of social and political being to the high privileges of a citizen of this great republic; and he will doubtless make a good citizen, meeting every obligation it imposes, whether it be in the camp or the cabinet. They are intellectually capable of high culture and civilization. The oratory of the unlettered savage has not unfrequently delighted educated ears, and the Indian blood has already marked its susceptibilities for intellectual superiority on many pages of our own history.

If he should, however, cling to his early habits, and refuse to obey the divine command to till the earth and earn his bread by the sweat of his brow, persist in wandering over the land and lead the life of a vagabond, the President is empowered to withhold his annuity arising from the sale of his land until he shall return to his home and resume the pursuits of industry. This power, your committee believe, will exercise a most salutary influence over the Indian in keeping him at home and engaged in industry.

But that feature in the system best adapted to the civilization of the Indian is the permanent settlement in their midst of a virtuous and moral white population. Our pioneers will seek homes on the virgin soil of the Indian country, carrying with them their families, thereby giving earnest of their purpose to demean themselves in a manner compatible with the high duties and obligations of citizens and Christians.

A white population of worth and integrity will occupy a large portion of the ceded soil in the midst of the Indians, to which they have hitherto been strangers. Heretofore the white race has generally been represented by vicious outlaws and desperate adventurers; and this association has degraded and debauched the poor Indian. The habits and appetites imparted to them by these adventurers, instead of elevating, has destroyed all the native virtues of the savage.

The bill will secure certainly the settlement of an industrious moral white population in the midst of the Indians; and their example will

incite the Indians to industry, the accumulation of property, and the acquisition of intelligence. They will learn skill in agriculture by having constantly in their vicinage practical farmers—when to sow and how to reap and garner; the uses of the plough, hoe, and spade, the scythe and sickle. Seeds and roots adapted to their soil and climate, and suitable to supply the wants of civilized life, will be introduced by their white neighbors; and the proper modes of rearing and caring for stocks of horses, cattle, and hogs, will be learned. The white man will erect school-houses and churches; and the Indian, when he learns the superiority of his white neighbor, in all the duties of life, from his superior intelligence and education, will become the patron of the school-house and the regular attendant of worship at the church. His traditions of the power and attributes of the Great Spirit will melt before the teachings of divine revelation; the Sabbath will be consecrated to the service of the Great Chief, and no more desecrated by the war-whoop or the sharp crack of the hunter's rifle.

This picture of their advanced and ameliorated condition, under the operation of the system they recommend, your committee believe is not overdrawn; and if it is true, philanthropy and humanity would be supremely elated at the happy change. To strew the pathway of life of half a million of human beings with prosperity and happiness, where it is now illuminated only by the baleful lights of poverty, ignorance, destitution, and threatened extinction, is a benevolence worthy of the exalted intellect and the benignant heart.

Your committee are not discouraged at the signal failure of all former efforts to civilize and domesticate these "children of the forest." They were founded in error; first, in paying them money annuities, which debauched them by furnishing them the means of gratifying their appetites; and, secondly, through the Indian intercourse act, casting, by its operation, on them a lawless class of white men.

An earnest desire to protect the Indian induced Congress at an early day (in 1802) to pass an act regulating trade and intercourse with the Indians. It prohibited all white persons from entering the Indian country, except such traders as might be licensed by the Indian agents. The agencies were extended over a vast amount of territory, and the agents could not, if they had been so inclined, always execute the law and drive off intruders. Its practical operation has been to keep out of the Indian country good men, and to introduce into it men whose vices and crimes expelled them from decent society. The licentiousness, vice, disease, and death, that have stalked with merciless strides through all their wigwams, found their germ in this most unfortunate and misjudged act. Good men have respected the law, and kept out of the Indian country; while bad men disregarded it, and entered upon their territory. There are honorable exceptions to this rule; but the mass of white men, who have renounced the society of their peers to make their haunts in the Indian country, in violation of all law, have been drawn from the very dregs of society. These men are responsible for most of the murders and robberies and wars which the Indians have made. These men have learned the poor savages all the *vices* of our race and none of its *virtues*.

If the system your committee recommend should be adopted, a class of white men will go into the Indian country for whose virtue we need not be ashamed, and for whose morality we need not blush. They will elevate the aspirations of the Indian; and that this diffusion may be general, and every vestige of their tribal associations and proclivities obliterated, it is provided that not more than six families shall make coterminous locations. This will insure a white neighbor near every Indian settlement.

There is one feature in the bill to which the attention of the House is specially invited. It is proposed to remunerate the emigrated tribes for the cession of their lands, by allowing them the entire net proceeds of the sale, when disposed of by the government. This compensation is more liberal than we have usually made, though it is not without precedent, as in the case of the Chickasaws and Black River Chippewas; but there are considerations not to be overlooked, demanding a generous and liberal policy towards the emigrated tribes, some of whom have already, at our solicitation and for very inadequate compensation, removed more than once. The lands they now occupy are guarantied to them in the most solemn and imposing form. If we ask them to modify the contract, they should be approached with none other than a just and liberal offer. The great interests of this republic require a modification of the terms on which they hold their lands. The safe and comfortable emigration of our citizens to and from the Pacific coast would be greatly promoted, if the Indian country was opened and settlements made along the various routes. At least one hundred thousand persons, annually, will hereafter traverse the routes; and much suffering of man and beast would be averted, if settlements were made at convenient intervals, and such crops raised as were needed to supply these caravans. The prospect of one or more railroads to the Pacific renders it necessary that the title shall be extinguished, that the right of way may be given to such companies as enter upon the contracts for their construction; and while the work is progressing, and when completed, the laws of the United States must be extended over the whole line. Crimes must be punished, which can now only be done, when committed in the Indian country, by removing the criminal to an organized State. Contracts must be respected and enforced. To do all this, territorial governments must be organized, courts established, and officers appointed. The whites can no longer be kept out of the Indian country; the plains and prairies to the Rocky mountains have nearly ceased to echo the lowing of the buffalo; the crack of the emigrant's whip, the merry jest and joyous laugh of the Caucasian man, now ring through the vast wilderness. Where there is so much of human life and property, law and government is a necessity which we must respect.

Congress must extend our laws so as to meet the governments on the Pacific, not only to subserve the convenience of our citizens, but to protect great national interests. It is a national necessity that requires us to assume the jurisdiction which the right of eminent domain entitles us to. In exercising it, we should scrupulously abstain from doing injustice to the emigrated tribes, who are entitled to the right of occupancy by treaties and conventions still in force.

The accompanying table, [at the end of the report,] prepared at the Indian Office, shows the different tribes effected by the bill, the country from whence they emigrated, their numbers, the quantity of land now held, the title by which held, the dates of treaties, and the annuities they receive.

The recommendation of your committee to give these tribes the net proceeds of the sales of the lands, when disposed of by the United States to purchasers, will be fully justified when the nature of their present title is explained, as we propose, by making short extracts from various treaties made with them, and also from the statutes of the United States.

The territory conveyed by the United States to the Sacs and Foxes was "for a permanent home;" to the Kickapoos "as their permanent place of residence as long as they may remain a tribe;" and to the same tribe, in a subsequent treaty, it was stipulated that the land they now occupy should be "assigned, conveyed, and *forever* secured by the United States to the said Kickapoo tribe as their permanent residence," &c.; to the Delawares, the land "should be conveyed and *forever* secured by the United States to the Delaware nation as their permanent residence, and the United States hereby pledges the faith of the government to guaranty to the said Delaware nation *forever* the possession, &c., against the claims and assaults of all and every people whatever;" to the Shawnees, Ottowas, Quapaws, and Senecas and Shawnees, it was agreed to "*grant by patent, in fee simple*, to them and their heirs forever, as long as they shall exist," &c.; and to the Peorias and Kaskaskias, the United States "cedes, &c., land *forever*, or as long as they may live upon it as a tribe."

The treaties from which these extracts are made are consistent with the legislation of Congress. On the 28th of May, 1830, Congress passed an act directory to the President of the United States, indicating the wish of the legislative department of the government as to the terms and conditions on which treaties should be made with the Indians for exchanging lands. The third section declares, "that in making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them and their heirs or successors the country so exchanged with them, and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided, always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

The title for perpetual occupancy is clear and indefeasible; and as there is a national necessity, growing out of our trans-montaine and Pacific acquisitions, to again ask our red brethren to modify existing stipulations to suit the exigencies of the case, would it be just or generous to acquire their lands for an inadequate consideration, and speculate in their sale upon the ignorance, the fear, or the weakness of these poor Indians?

Your committee would not concede to a small number of savage men, white or red, the right of appropriating absolutely a vast terri-

torial area, that they may live by the chase or upon the spontaneous productions of the earth rather than by labor, when such lands might be required for the plough of the husbandman, or when the safety or convenience of an adjacent civilized State required that it should be subdued and brought into cultivation. The civilization of the white is vastly superior to the civilization of the red man; it is productive of more social happiness, and is better adapted to intellectual progress. Hence, when the expansion of our population has required additional territory, the government has acted wisely in appropriating it—generally by purchase, and for a reasonable consideration, if the value of the lands acquired is measured by the usufruct it bore the Indians. The guarantees we have given these emigrated tribes, the plighted faith of the nation to them in laws and treaties, render it imperative on the government to obtain their consent before it appropriates their land; and that consent should not be given by the Indians unless the government agrees to pay them all it may receive for the lands, deducting only the expenses incident to its disposition. The bill meets the justice of the case. The money is to be paid, from time to time, as the sales progress, and distributed to individuals in such proportions as each treaty may respectively stipulate. Each tribe will have one or more agents for making payments and supervising generally their affairs. If any Indian is by him considered incompetent to manage prudently the sums to be paid him, it will be the duty of the agent to report the fact to the President, who is authorized to commute cash payments for payments in clothing, provisions, &c.; which articles are made inalienable to any white person under penalties which will secure the observance of this provision. The President may also authorize the money thus due to be expended in the clearing and fencing of lands and the erection of buildings. Those who are competent to manage for themselves receive the payments in cash, and may disburse it at their own option. Every Indian will be secured a permanent home and the comforts and pleasures it bears. It will give him individuality, self-respect; elevate his aspirations and enlarge his affections. His moral and intellectual nature will be changed; his erratic tastes will be swallowed up in the blandishments of a permanent home, and his love of excitement, for war, and the chase will be satiated in the acquisition of wealth and knowledge.

Individual right to property, with the privilege of enjoying, granting, and bequeathing it, is the great effective stimulant to industry; without it, our civilization would not have reached higher than the barbarous rudeness of savage life.

The Indian has no conception of title to land in severalty; it is his while he occupies it. He has no well-defined security for the rights of person or property; the weak have no shield between oppression and the strong. This makes the red man idle; he is not so naturally; his temperament is active and his motion quick. Throw around him the protection of the white man's laws, and he will rise not more highly in our appreciation of him than in his appreciation of himself. When his property is despoiled, give him a court to appeal to, instead of the war-club; let him feel that his person is secure, and that his home is

"his castle;" convince him by kindness that the white man is his friend, and that all the race are not treacherous, and the Indian will be a far nobler specimen of humanity than his former developments would indicate. Give him the rights of citizenship, when he proves himself to be capable of their exercise by industry and good deportment, and you will have converted the rude savage into the exemplary citizen: in war, to rally under the stars and stripes; in peace, to develop the country; and when his posterity shall speak of the white man, let your public acts be so just and liberal to the ancestor, that they will bless you with benedictions rather than curse you with imprecations.

Your committee recommend the passage of the bill, with the accompanying amendments.



*Statement of the numbers, position, territory, &c., of certain tribes of Indians in Iowa and Missouri; prepared from the*

No.	Names of the tribes.	Population of each tribe.	Former residences of the tribes not indigenous to their present country.	Locality and boundaries of present residence.
...	.....	1, 300	Indigenous . . . . .	Bounded N. by Eau-qui-court; E. by Missouri, S. by the Platte and W. by longitude 96° west
...	.....	4, 500	....do.....	North by Platte, east by Omaha
...	.....	1, 000	....do.....	North by Platte, east by Missouri south by Little Nemaha.
...	.....	250	....do.....	North of Little Nemaha, east Missouri, south by Great Nemaha, west by line.
...	.....	437	North of Missouri, and between that State and the Missouri river.	North by Great Nemaha, south by Sacs and Foxes of Missouri
1	Sacs and Foxes of Missouri.	200	Do.... do.....	North of Kickapoos.....
2	Kickapoos .....	475	Illinois and Missouri..	North and east of Delawares.
3	Delawares .....	1, 132	Ohio, Indiana, and Missouri.	South of Kansas river, east Missouri.
4	Pottawatomies ....	4, 300	Illinois, Indiana, Iowa, Michigan, Ohio, and Wisconsin.	On Kansas river, west of Sacs and Delawares.
5	Wyandots .....	553	Ohio and Michigan...	Southeast corner of Delaware territory.
6	Shawnees .....	931	Ohio and Missouri.....	South of Kansas river, east Missouri State line.
7	Weas and Piankeshaws.	251	Indiana, Missouri, Illinois, and Ohio.	North by Shawnees, east by Missouri State line.
8	Peorias and Kaskaskias.	255	Illinois, Indiana, and Missouri.	West of Weas and Piankeshaws.
9	Ottowas .....	247	Ohio .....	North by Shawnees, east by Peorias, west by Sacs and Foxes
10	Sacs and Foxes of Mississippi.	2, 173	Iowa and Illinois .....	North by Shawnees, east by Peorias
11	Swan Creek & Black River Chippewas.	30	Michigan.....	Between Ottowas and Sacs and Foxes.
12	Kansas .....	1, 375	Missouri and Arkansas	Headwaters of Neosho, at Council Grove.
13	Miamies .....	250	Indiana.....	North by Weas and Piankeshaws east by Missouri State line.
14	Osages .....	4, 941	Missouri and Arkansas	South by Cherokees, east by Cherokee new trail ground.
15	Quapaws .....	314	Arkansas and Louisiana.	East by Missouri line, north Cherokee new trail ground.
16	Senecas & Shawnees, (Lewistown.)	290	Ohio .....	North by Quapaws.....
17	Senecas, (Sandusky.)	177	Ohio .....	North by Senecas and Shawnees
..	.....	17, 530	Georgia, Alabama, Tennessee, and N. Carolina.	North by Osages and Still Point south by Creeks, east by Missouri line, and Quapaws, Senecas and Shawnees.

\* Approximate quantity.

† And outlet.

‡ Exclusive of the tract of 80

*south of the Missouri river and west of the boundaries of the States of Iowa data in the possession of the Indian Office.*

Area of reservation.		Share of land to each Indian, in acres.	Character of title.	Date of treaty.	Where treaty may be found.	Current annuities and provisions, 1853.
In square miles.	In acres.					
7,000*	4,480,000	4,148	Indian title ...	Oct. 15, 1836	Statutes at Large, vol. 7, p. 524.	\$1,440 00
20,000*	12,800,000	2,844	.....do.....	Oct. 9, 1833	Statutes at Large, vol. 7, p. 449.	1,000 00
5,000*	3,200,000	3,555	.....do.....	Sept. 21, 1833	Statutes at Large, vol. 7, p. 429.	2,000 00
250*	160,000	640	Treaty in perpetuity.	July 15, 1830	Statutes at Large, vol. 7, p. 330.	.....
200	128,000	159	.....do.....	Sept. 17, 1836	Statutes at Large, vol. 7, p. 511.	7,875 00
200	128,000	1,000	.....do.....	.....do.....	.....	7,870 00
1,200	768,000	1,489	.....do.....	Oct. 24, Nov. 26, 1832.	.....	.....
1,300†	832,000	691	.....do.....	Sept. 24, 1829	.....	10,144 00
900	576,000	134	Purchase of U. States.	June 5 and 17, 1846.	.....	80,180 00
37 $\frac{1}{2}$	23,960	41	Purchase from Delawares.	Dec. 14, 1843	.....	23,935 00
2,656 $\frac{1}{2}$	1,700,000	1,336	Treaty in perpetuity.	Nov. 7, 1825	.....	4,120 00
250	160,000	640	.....do.....	Aug. 8, 1831	.....	3,800 00
150	96,000	1,200	.....do.....	Oct. 29, 1832	.....	.....
53 $\frac{1}{2}$	34,000	151	Patent .....	Oct. 27, 1832	.....	.....
680	435,200	163	Patent .....	Aug. 30, 1831	.....	475 04
13	8,320	252	Treaty in perpetuity.	Oct. 11, 1842	.....	73,880 00
400	256,000	186	Treaty .....	May 9, 1836	.....	293 48
781 $\frac{1}{2}$	500,000	2,000	Indian title....	Jan. 14, 1846	.....	10,000 00
8,000	5,120,000	1,122	Treaty in perpetuity.	Nov. 28, 1840	.....	42,580 00
150	96,000	305	.....do.....	June 2, 1825	.....	25,456 00
46 $\frac{1}{2}$	30,000	103	Patent .....	May 13, 1833	.....	2,660 00
151 $\frac{1}{2}$	97,200	549	Treaty in perpetuity.	July 20, 1831	.....	2,827 06
8,040†	5,145,000	293	Patent .....	Feb. 26, 1831	.....	250 00
			.....do.....	Dec. 29, 1832	.....	.....
			.....do.....	Dec. 29, 1836	.....	.....
			.....do.....	Aug. 6, 1846	.....	.....

acres lying north of the Quapaws, between Osage country and Missouri State line.



ROBERT GRAHAM.

[To accompany bill H. R. No. 327.]



APRIL 7, 1854.

Mr. J. H. LANE, from the Committee on Private Land Claims, made the following

## REPORT.

*The Committee on Private Land Claims, to whom was referred the memorial of Robert Graham, report:*

That they have carefully examined the memorial, and find that the petitioner asks to be confirmed in the enjoyment and possession of so much of a tract of land formerly granted to Baynton, Morgan and Wharton, as has not been sold by the United States, and to be paid from the treasury of the United States the full proceeds of what may have been so disposed of, with interest thereon.

The uncontested and record facts in the case are, that on the 12th April, 1769, John Wilkins, governor and commander of the Illinois Territory, granted to Baynton, Wharton and Morgan, by metes and bounds, a certain tract of land in said Territory, supposed to contain 13,986 acres, but, by actual survey, found to contain 23,900 acres; that by various sales and assignments, one-half of this tract has regularly passed into the hands of the present memorialist; that Baynton, Wharton and Morgan, and their assignees, continued in its undisturbed possession under this grant until the 12th August, 1800, when it was patented to them by A. St. Clair, governor of the Northwest Territory; that the patentees paid taxes on it to the United States government until 1809, when the United States commissioners reported against its validity, and under this report it was disallowed by the Land Office.

The first objection rests upon an assumed want of authority in Wilkins to make the original grant, since in its tenor it was, as is contended, in contravention of the King's proclamation of October 7th, 1763. But the grant itself recites that it is made by a virtue and power of authority by him given "by his Majesty's orders for the better settlement of the colony." And in his proclamation, in the French language, dated 5th February, 1769, after reciting, by a previous ordinance, 21st November, 1768, he had required a registry of titles, &c., he goes on to recite, that, "by virtue of orders which I have received from General Gage in pursuance of the last instructions sent him from England, I have full power to establish corporations, make grants, and confirm titles," &c.

It is a well established principle of public law, sanctioned by the Supreme Court of the United States, that the acts of a person in a public capacity are presumed to be lawfully done, and that one claiming under them is not required to prove such authority; and hence, unless it be demonstrated that "Wilkins" exceeded his authority, his acts *must be received as valid*. But the proclamation of 1763 was not in its nature unalterable, for in the grant to Baynton, &c., made *six years afterwards*, he declares he is acting *under the power vested in him*; and in his proclamation of *5th February, 1769*, he announces to the world that authority was vested in him by the *last orders transmitted from England through General Gage*.

We think it, then, incontrovertibly established that he had authority to make the grant. But it was further urged, that the grant was to be inoperative unless confirmed by his Majesty, or the commander-in-chief. *Directly the reverse is true*, for the grant recites that it shall be void if disapproved by his Majesty, (see paper marked A.) That it was ever disapproved, is not pretended, and hence *no defeasance ever occurred*. The committee cannot resist the conclusion, therefore, that the original grant was made by one having competent authority, and should be respected by the government. In addition to the foregoing, the committee deem it not amiss to remark, that the court in *Kaskaskia* established by the British crown, under a judgment against Winston, assignee of Baynton, &c., sold said tract of land as the property of *said assignee*, showing conclusively that the British authority recognised his rights thereto.

The next question is as to the efficiency of the patent granted by Governor St. Clair on 12th August, 1800.

It has been urged that his functions as governor of that portion of the Northwest Territory in which the grant lies, ceased on the 4th July, 1800; and that therefore his acts as such are void. It is true that Indiana was erected into a separate Territory from and after that date, and that W. H. Harrison was appointed governor thereof 13th May, 1800; but his appointment certainly did not take effect from date, as there was then no Territory of Indiana, and it could only commence when he entered upon the discharge of his duties, which was not until 10th January, 1801. (See paper marked B.) In the mean time, St. Clair continued to act as governor of the Northwest Territory, as is evidenced by the issuing of a draft for his salary, 10th October, 1800; and also signing bills for Territorial legislature, 9th December, 1800; (see papers marked C and D;) and by his issuing patents, and performing all the other functions of the office.

The secretary arrived at Vincennes on the 22d July, 1800; but it was not until 10th January, 1801, that Governor Harrison appeared, and the government was organized, there not having previously been a sworn officer in the Territory. And it is to be remarked that the very commissioners who objected that St. Clair had no authority to issue the patent in this case, because he had ceased to be governor, affirmed other patents issued by him after 12th August: in fact, if he was not the governor, there was an interregnum from 4th July, 1800, to 10th January, 1801, within which no law or government was in force in that Territory.

But it appears that the confirmation was perfected as early as 1791 or 1792 ; and such confirmation perfected a title, if not previously valid, without any further act or patent. (See records marked E, pages 5 and 6, No. 19.)

Assuming, then, that he was on the 12th of August, 1800, governor of the whole of the Northwest Territory, as is shown by his appointment, which was to continue until he was relieved by a successor, which did not occur until January 10th, 1801, and by his settled accounts with the government, had he the authority to make a valid confirmation to the grant assigned to Baynton, Wharton and Morgan? On this point the committee is relieved from labor by Senate report No. 66, 1st session 30th Congress, which they subjoin and make a part of this report, (see paper marked F,) which report contains a decision of the supreme court of Illinois, (Breese's Report, p. 206,) and is concurred in by the Senate. The committee deem the cases analogous in law and fact, and the decision a well settled principle.

## F.

IN SENATE OF THE UNITED STATES—February 11, 1848.

Mr. Downs made the following report :

*The Committee on Private Land Claims, to whom were referred the memorials of Adelaide Snyder and Henriette Pensoneau, heirs of Jean F. Perry, deceased; John Bleakley, William Bleakley, Nicholas Badiger, and Juliana Bleakley, heirs of Josiah Bleakley; James L. D. Morrison, John M. Morrison, and R. F. Morrison, heirs of Robert Morrison, deceased, and Rital Jarrot and others, heirs of Nicholas Jarrot, deceased, report:*

That they have carefully examined the petitions of the respective memorialists, and find that they ask to be allowed to locate lands in the State of Illinois, in lieu of certain lands confirmed to their respective ancestors by the governors of the Northwestern and Indiana Territories, and afterwards withheld from them in consequence of the action of the board of commissioners convened at Kaskaskia, in the then Illinois Territory, under the authority of the act of Congress of 20th February, 1812, which lands, they allege, have since been disposed of by the United States.

It appears from the memorial of the petitioners, and has been established to the full satisfaction of the committee, by exemplified copies of the patents issued by the governors, orders of survey, and location of claims to land set up by the petitioners, as well as by the report of the commissioners at Kaskaskia, that Governor Arthur St. Clair, whilst governor of the Northwestern Territory, confirmed and patented to Josiah Bleakley 400 acres of land, being claim 644, section 558, 2d volume American State Papers, in the State of Illinois, in right of François Sancier, who was the original claimant, in virtue of having cultivated the same under a supposed grant from the French authorities ; that William H. Harrison, whilst governor of the Indiana Territory, confirmed to Jean F. Perry three thousand two hundred acres,

being claim number 713, containing four hundred acres, in right of John B. Mercier; number 717, containing four hundred acres, in right of Joseph Petre, alias Gascon, which said two claims are in right of improvements made by said Mercier and Petre, alias Gascon; claims number 723, four hundred acres, in right of Michael Chartr; claim 724, four hundred acres, in right of François Dalauril; claim 711, four hundred acres, in right of Alphonse Peter; claim 721, four hundred acres, in right of Joseph Rell, sen.; claim 729, four hundred acres, in right of Joseph Rell, jr.; and claim 716, four hundred acres, in right of Jean B. St. Michael; the seven last claims in right of donations made by virtue of acts of Congress to the settlers of Kaskaskia and Vincennes, in the year 1783; also, that he confirmed to Robert Morrison claim number 1040, containing four hundred acres, in right of improvement made by John Brand; also that he confirmed to Nicolas Jarrot claim number 95, containing four hundred acres, in right of improvement made by Jean B. Barbeau; also claim number 117, containing two hundred acres, in right of Augustine Girardin, sr., and of Marie Girardin, which claims contain, in the aggregate, four thousand six hundred acres of land. The above claims may all be found in the report of the commissioners on private land claims, as contained in the 2d vol. American State Papers, private lands, from page 193 to 200. The labor of the committee, in the examination of the grounds upon which the respective claimants seek relief, has been greatly lightened and facilitated by a reference to the decision of the supreme court of the State of Illinois in the case of "Doe, on the demise of Moore and others vs. Samuel Hill," as reported in Breese's "Illinois Report," page 24. A printed copy of which decision has been furnished the committee by the claimants, and is referred to by the committee as an able exposition of the law, bearing upon the claimants' rights, and, to your committee fully and satisfactorily establishes the legal claims of the memorialists. Your committee can see no injustice that will result to the government by adopting the reasoning and conclusions of the supreme court of the State of Illinois, in the case above alluded to, as having undergone judicial investigation, and which claim is numbered as claim 117 in the same report in which the claims of the memorialists are contained. 2d vol. American State Papers, page 193. The opinion of the supreme court is as follows :

JOHN DOE, *ex dem.* MOORE and others, plaintiffs, }  
*vs.* }  
 SAMUEL HILL, defendant.

(AGREED CASE FROM MONROE.)

*Opinion of the Court by Justice Lockwood.*

This is an action of ejectment, commenced in the Monroe circuit court, for the recovery of a tract of land situate in Monroe county. At the trial a special verdict was found, which contains in substance the following facts: That on the 12th day of February, 1799, Arthu

Clair, then governor of the Territory northwest of the river Ohio, granted his deed of confirmation or patent to Nicholas Jarrot, to the premises set out in the plaintiff's declaration, which deed of confirmation is as follows, to wit:

"Territory of the United States northwest of the Ohio. *Arthur St. Clair*, governor of the Territory of the United States northwest of the Ohio, to all persons who shall see these presents, greeting:

"Know ye, that in pursuance of the acts of Congress of the 20th of June and 28th of August, 1789, and the instructions to the governor of the said Territory, of the 20th of August of the same year, the titles and possessions of the French and Canadian inhabitants, and other settlers in the Illinois country, and at St. Vincennes, on the Wabash, the claims to which have been by them presented, have been duly examined into, and Nicholas Jarrot lays claim to a certain tract or parcel of land lying and being in the county of St. Clair, and bounded in manner following, to wit: (here the governor's confirmation sets out the boundaries:) to which, for anything appearing to the contrary, he is rightfully entitled, as assignee of Philip Engel. Now, to the end that the said Nicholas Jarrot, his heirs and assigns, may be forever quieted in same, I do, by virtue of the acts and instructions of Congress before mentioned, confirm unto Nicholas Jarrot, his heirs and assigns, the above described tract or parcel of land lying and being in the county of St. Clair, and containing 778 acres and 131 perches, together with all and singular the appurtenances whatsoever, to the said described tract or parcel of land, with the appurtenances, to him, the said Nicholas Jarrot, to have and to hold, to the only proper use of the said Nicholas Jarrot, his heirs and assigns forever; saving, however, to all and every person, their rights to the same or any part thereof, in law or equity, prior to those on which the claim of the said Nicholas is founded.

"In testimony whereof, I have hereunto set my hand, and caused the seal of the Territory to be affixed, at Cincinnati, in the county of Hamilton, on the 12th day of February, A. D. 1799, and of the independence of the United States the twenty-third.

"ARTHUR ST. CLAIR.

"Registered:

"WM. H. HARRISON,

"*Secretary of the Territory.*

"Recorded 19th of October, 1804."

The verdict further finds, that on the 2d day of January, 1801, Jarrot conveyed the above mentioned premises, by deed of bargain and sale, to one George Lunceford. That the lessors of the plaintiff are the only heirs-at-law of said George Lunceford; that the premises mentioned in the governor's confirmation were surveyed by Daniel McCann, who was lawfully authorized to survey such claims, and was afterwards surveyed by Wm. Rector, deputy surveyor of the United States, for the said George Lunceford, prior to the year 1812. The jury also find, that after the above recited confirmation and surveys were made, the board of commissioners at Kaskaskia, who were empowered by the act



of Congress, bearing date the 20th day of February, 1812, to revise and re-examine the confirmations to land made by the governor of the Northwest Territory, did, in pursuance of the said act, after an examination of the said claim, make a report thereon to the government of the United States, whereupon the government of the United States, by its proper officers, did reject the same.

The jury also found, that the said premises were afterwards exposed to public sale by the government of the United States, and that the defendant, Samuel Hill, became the purchaser of about 320 acres thereof, and has paid therefor, and obtained a patent from the United States.

Now, if the court should be of opinion that the law of the case is with the defendant, then the jury find him not guilty; but if the court should be of opinion, from the whole statement of facts here found, that the law is in favor of the plaintiff, then the jury find the defendant guilty of the trespass in the declaration mentioned, and assess the plaintiff's damages at one cent. On this verdict the circuit court rendered judgment for the defendant, and the cause is brought into this court by consent. On the part of the plaintiff it was contended:

1. That the governor had *full power* to make the confirmation, and thereby a title in fee simple in the premises was vested in Nicholas Jarrot, which no subsequent act of the government of the United States could divest.

2. That Congress had, by their legislation, recognised the confirmations, and thereby had, if there was any defect of power in the governor, made his acts valid.

On the part of the defendant it was urged:

1. That the governor had no power to make the confirmation.

2. That he had exceeded his authority.

3. That Congress have the power, admitting the governor acted in pursuance of law, to nullify his acts.

4. That the verdict is defective, because it does not appear that the premises lie within the limits prescribed by the resolution of Congress passed in 1788.

5. Because the verdict does not find that plaintiff had a previous estate for the confirmation to act on.

I propose to examine the correctness of the several positions advanced by the counsel for each of the parties. It was conceded, on the argument, that the United States were the original proprietors, and the source from whence the titles of both parties were derived to the premises.

It is a principle in the action of ejectment that, let the defendant's title be ever so defective, still it is incumbent on the lessors of the plaintiff to furnish evidence of a good title in themselves. Has such evidence been produced? In order fully to understand the nature of the title exhibited on the part of the lessors, it will be necessary to take a concise view of the history of this country, and the legislation growing out of it.

The whole territory north of the river Ohio, and west of Pennsylvania, extending northwardly to the northern boundary of the United States, and westwardly to the Mississippi river, was claimed by Virginia to be within her chartered limits, and during the revolutionary

war her troops conquered the country, and Virginia came in possession of the French settlements situated on the Mississippi river. New York, Connecticut, and Massachusetts also claimed portions of the same territory. Other States, whose limits contained but small portions of waste and uncultivated lands, contended that a portion of the uncultivated lands claimed by Virginia, New York, &c., ought to be appropriated as a common fund to pay the expenses of the war. Congress, to compose these conflicting claims and opinions, recommended to the States having large tracts of waste unappropriated lands in the western country, to make a liberal cession to the United States of a portion of their respective claims, for the common benefit of the Union. Virginia, in pursuance of this recommendation, on the 1st of March, 1784, yielded to the United States all her right, title, and claim to the territory north-west of the river Ohio, upon certain conditions.

One of the conditions contained in the deed of transfer from Virginia to the United States, and acceded to by the United States, is as follows: "That the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their *possessions and titles confirmed* to them, and be protected in the enjoyment of their rights and liberties." The acceptance on the part of the United States of the deed transferring this country, imposed on them the duty to have the *possessions and titles* of the inhabitants of the country *confirmed* to them; but no steps were taken by Congress relative to this subject until the year 1788, when George Morgan and his associates presented a memorial to Congress, proposing to purchase a large tract of land in Illinois, on the Mississippi river, including all the French settlements on that river, and the premises in question.

On this memorial a committee of Congress made a detailed report to that body on the 20th June, 1788, which was agreed to by Congress, and thereby the recommendations of the report became a law; such being the manner in which Congress, under the confederation, enacted laws. See 1st vol. Laws of the United States, 580.

The committee in their report say, that "they are of opinion that, from any general sale which may be made of the lands on the Mississippi, there should at least be a reserve of so much land as may satisfy all the just claims of the ancient settlers on that river, and that they should be confirmed in the possession of such lands as they have had at the beginning of the late revolution, which have been allotted to them according to the laws and usages of the governments under which they have respectively settled." The committee, then, recommend that separate tracts be reserved, embracing within their limits all the claims of the inhabitants, as was supposed, for satisfying the "claims of the ancient settlers," and for donations "for each of the families *now living* at either of the villages of the Kaskaskias, La Prairie du Rocher, Kahokia, Fort Chartres, and St. Phillips."

They further recommended "that measures be immediately taken for confirming in their possessions and titles the French and Canadian inhabitants and other settlers on those lands, who, on or before the year 1783, had professed themselves citizens of the United States, or any of them, and for *laying off* the several tracts which they might rightfully

claim within the described limits." The report concludes as follows: "That whenever the French and Canadian inhabitants, and other settlers aforesaid, shall have been *confirmed* in their possessions and titles, and the amount of the same ascertained, and the three additional parallelograms for future donations, and a tract of land one mile square on the Mississippi, extending as far above as below Fort Chartres, and including the said fort, the building and improvements adjoining the same, shall be laid off, the whole remainder of the soil within the reserved limits above described shall be considered as pertaining to the general purchase, and shall be conveyed accordingly." "That the governor of the Western Territory be instructed to repair to the French settlements on the Mississippi, at and above the Kaskaskias; that he examine the titles and possessions of the settlers, as above described, in order to determine what quantity of land they may severally claim, which shall be laid off for them *at their own expense*; and that he take an account of the several heads of families living within the reserved limits, in order that he may determine the quantity of land that is to be laid off in the several parallelograms, which shall be laid off accordingly by the geographer of the United States, or his assistant, at the expense of the United States."

This report was subsequently recommitted to a committee, who, on the 28th of August, 1788, reported to Congress some alterations in the terms of the contract between Morgan and his associates and the United States, but no essential variations were made in relation to the French and other settlers on the land, except as follows: "That in case there are any improvements belonging to the ancient French settlers, without the general reserved limits, the same shall also be considered as reserved for them in the sale now proposed to be made." This report was adopted by Congress. It may be here remarked that the contemplated sale to Morgan and others was never effected. On the report of another committee, instructions were given by Congress to the governor of the Western Territory, dated 29th of August, 1788, from which I make the following extracts:

• "SIR: You are to proceed without delay, except while you are necessarily detained by the treaty now on hand, to the French settlements on the Mississippi river, in order to give despatch to the *several measures* which are to be taken according to the *acts* of the 20th June last, and the 28th instant, of which a copy is enclosed for your information." "When you have examined the titles and possessions of the settlers on the Mississippi, *in which they are to be confirmed*, and given directions for laying out the several squares which the settlers may decide, as they shall think best among themselves, by lot, you are to report the whole of your proceedings to Congress."

Whether the governor took any immediate steps to perform the duties enjoined on him by this letter of instructions and the acts of Congress of the 20th June and 18th of August, 1788, does not appear from the verdict, and I am not acquainted with any public document to ascertain the fact. But, that Congress did not consider that the power of the governor should cease upon his failure to "proceed without delay" *to attend to his business*, is evident from the act of Congress, entitled "*An act for granting lands to the inhabitants and settlers of Vincennes*"

and the Illinois country, in the Territory northwest of the Ohio, and for confirming them in their possessions," passed 3d March, 1781.

From a hasty perusal of this act it might be inferred that it was intended as a substitute for the acts of the 20th June and 28th August, 1788, and consequently a virtual repeal of them. I am, however, satisfied from a careful perusal of the act, that such was not the intention of Congress, but that this act was intended to embrace cases not included in the former acts, and repeals a part of the act of 28th August, 1788. That this is the object of this act, will appear from the following abstract of the different sections: Section one gives 400 acres to each of those persons "who in 1783 were heads of families at Vincennes, or in the Illinois country on the Mississippi, and who since that time have removed from one of the said places to the other." This section gives the donation, notwithstanding a removal from one place to another. By the second section, heads of families at Vincennes and the Illinois country in 1783, who afterwards removed without the limits of the Territory, are, notwithstanding, entitled to the donation of 400 acres, made by resolve of Congress on the 29th of August, 1788; and the governor is directed to "cause the same to be laid out for such heads of families, or their heirs, and to cause to be laid off and confirmed to such persons the several tracts of land which they may have possessed, and which, before the year 1783, may have been allotted to them, according to the laws and usages of the government under which they may have respectively settled. *Provided*, That if such persons, or their heirs, do not return and occupy the said land within five years, such land shall be considered as forfeited to the United States."

One branch of this section gives the donation of 400 acres, notwithstanding the settler had moved out of the Territory; and the other branch authorizes a confirmation of lands that may have been possessed, according to the laws and usages, by allotment, but without a legal title to the fee. But in both cases the grant to be forfeited, in case the settler or his heirs do not return and occupy said land in five years.

This section cannot be considered a compliance with the obligation resting on Congress to *confirm* the French settlers in their *possessions and titles* in pursuance of the deed of cession from Virginia. The confirmation contemplated by the cession was an absolute assurance of the lands to these persons, whether they occupied them or not. The third section of the act relates to other matters.

The fourth section is as follows: "That where lands have been *actually improved and cultivated*, at Vincennes or in the Illinois country, under a *supposed* grant of the same by any commandant or court, claiming authority to make such grant, the governor of said Territory be, and he is hereby, empowered to confirm to the persons who made such improvements, their heirs or assigns, the lands *supposed* to have been granted as aforesaid, or such parts thereof as he in his discretion may judge reasonable, not exceeding to any one person 400 acres." This section evidently embraces only such cases as, from defect of power in the granting authority, left the settler without any valid title to support his possession; and hence it only operates on cases where the settler *had actually improved and cultivated* the land, and limits the

extent of the confirmation to 400 acres. This, clearly, is not the confirmation contemplated by the deed of cession. The deed of cession was intended to secure the inhabitants in their titles, whether they cultivated the land or not, and whatever might be the extent of their claims. This section, then, does not embrace the possessions and titles contemplated by the deed of cession. The 5th, 6th, and 7th sections relate to other matters.

The eighth and last section repeals "so much of the act of Congress of 28th August, 1788, as refers to the location of certain tract of land directed to be run out, and reserved for donations to the ancient settlers in the Illinois country; and the governor of the said Territory is directed to lay out the same, agreeably to the act of Congress of 20th June, 1788." This section clearly recognises the act of 20th June, 1788, as in full force. From this review of the act of 1791, it will be perceived that all its provisions are in addition, and not repugnant nor in lieu of, the provisions of the act of 20th June, 1788.

That portion of the act of 1788 that relates to the confirmation of the title of the settlers, was in compliance with the obligation of the act of 1791 was prompted by a spirit of liberality towards persons who had recently, by the fate of war, become subjects and citizens of a government to which they were strangers, and was, no doubt, intended to conciliate and secure their attachment to the United States. If, then, the act of 20th June, 1788, is to be regarded as in force, notwithstanding the act of 1791, what power did it confer on the governor of the Northwest Territory? Doubtless, upon the change that was effected in the government when the French settlements were conquered by the troops of Virginia, many fears would be excited in the minds of the inhabitants, that the grants that had been made to them by the French and British governments would not be recognised by their conquerors.

To allay any such fears, was probably the reason that induced Virginia to require the confirmations of the titles and possessions of the French settlers; and to effect so desirable an object, some act was required to be performed *in pais*, which could completely quiet all apprehensions. Could this be done by anything short of an acknowledgment on the part of the United States that they never would disturb such titles and possessions as their agents should determine to be valid? A deed of confirmation, or patent, would release all the interest of the United States in the titles and possessions of the settlers, and answer effectually the wise and benevolent object that Virginia doubtless had in view in requiring that the United States should confirm these titles and possessions.

That Congress intended to clothe the governor with power to require the confirmations of the possessions and titles of the French inhabitants of the Illinois country, is sufficiently apparent from the language of the act and instructions of 1788. Should any doubt, however, exist on the subject, the act of 1791, being a subsequent exposition of their intention and meaning, would remove it. By the fourth section of the act of 1791, "where any lands have been actually improved and cultivated at the time of the cession, or in the Illinois country, under a *supposed grant* of the same by any commandant or court claiming authority to make such grant, the *governor of the said (Northwest) Territory* hereby is empowered to

firm to the persons who made such improvements, their heirs or assigns, the lands supposed to be granted as aforesaid, or such parts," &c.

That the governor should be empowered to confirm claims which rested on the liberality of Congress only, and not those founded on previous right, and which the United States were bound to confirm by a solemn compact, is so inconsistent with reason that Congress ought not to be supposed to have intended any distinction. A reference to this statute, being *in pari materia*, is proper to ascertain the probable intention of Congress, if the acts and instructions of 1788 are not sufficiently clear in themselves.

That other statutes on the same subject may be consulted in construing what is doubtful, see 4 Bac. Abr. 647, 1 Kent's Comm., page 433.

The intention of the legislature should also be regarded, though seeming to vary from the letter.—4 Bac. Abr. 643. From the letter and spirit, then, of the acts of 1788, and the instructions of the same year, it appears sufficiently clear that the governor had power to make deeds of confirmation to the French and other inhabitants of the Illinois country.

These deeds of confirmation must also be considered, at least, as *prima facie* evidence that they were rightfully made. The governor was authorized to confirm to the settlers their possessions and titles; and if his acts are not to be regarded, *prima facie*, as honestly and fairly done, what benefit would result to the settlers?

If, in order to show their deeds of confirmation, they must first give evidence of the title to their land, then the confirmations of the governor would be a farce, and the settlers would have been at the expense of surveying their lands for no useful purpose. But, in truth, these confirmations were to be a benefit to the United States, as well as to the settlers; for, by the settlers surveying their lands, and exhibiting their claims to the governor, the United States became apprized of the extent of those claims, and were thus enabled to ascertain what lands remained to them subject to be sold. It was a convenient mode of dividing the lands of individuals from the lands of the nation; and as an inducement for the settlers to survey their claims and adduce their titles to the governor, he was authorized, should he, upon examination, find them honest and fair, to relinquish all claim on the part of the United States to those lands. "A confirmation, at common law, is of a nature nearly allied to a release, and is a conveyance of an estate or right *in esse*, whereby a violable estate is made sure and unavoidable, or whereby a particular estate is increased."—2 Bl. Com., 325. Upon this definition of a confirmation, the *confirmor*, or those claiming under him, would not be permitted to deny the pre-existing estate in the *confirree*. The *confirmor*, and those claiming under him, would be estopped by his deed. But from an examination of the several acts of Congress relative to governors' confirmations, a higher character has been given them than that of mere confirmations.

By the fourth section of the act entitled "An act supplementary to an act entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes,' passed 3d March, 1805," it is enacted, "That the lands lying within the districts of Vin-

cennes, Kaskaskias, and Detroit, which are claimed by authority of French or British grants legally executed, or by virtue of grants issued under the authority of any former act of Congress, by either of the governors of the Northwest or Indiana Territories, and which have already been surveyed by a person authorized to execute such surveys, shall, whenever it shall be necessary to re-survey the same for the purpose of ascertaining the adjacent vacant lands, be surveyed at the expense of the United States, any act to the contrary notwithstanding."—3d vol. Laws of the United States, 671. As I have been unable to find any act of Congress which gave to the governors of the Northwest Territory any power to make "grants," except the acts of 1788 and the act of 1791, I thence infer that the "confirmations," contemplated by those acts were regarded by Congress in the nature of grants so far as the United States were concerned; and if grants, a subsequent sale of the granted lands by the United States, although followed by a patent, is void. In the act entitled "An act respecting the claims to land in the Indiana Territory and State of Ohio," passed 21st April, 1806, the confirmations authorized by the acts of 1788 and 1791 are called "patents," and this, probably, is the more correct name by which to designate the instrument granted by the governor under the act of 1788 and 1791.

The second proposition of the plaintiff is, that Congress had recognised by their legislation the confirmations, and thereby had, if there was any defect of power in the governor, made his proceedings valid. The authority of the governor to confirm the titles and possessions of the settlers under the acts of 1788 and the act of 1791 continued until the 26th of March, 1804, a period of nearly sixteen years, when a board of commissioners were appointed to sit at Kaskaskia, to hear proof relative to British and French grants, and report to the Secretary of the Treasury.

This board virtually superseded the powers of the governor. But nothing appears from the acts of Congress, in disapprobation of the proceedings of the governor, until the passage of an act on the 20th of February, 1812, which authorized the register and receiver of the land office at Kaskaskia, and another person to be appointed by the President of the United States, to examine and inquire into the validity of claims to land in the district of Kaskaskia, which are derived from confirmations made, or pretended to be made, by the governor of the Northwest and Indiana Territories respectively, "and they shall report to the Secretary of the Treasury, to be laid by him before Congress at their next session, their opinion on each of the claims aforesaid." It will be recollected that the governor was directed, by the instructions of the 29th August, 1788, to report his proceedings to Congress, and it is fair to presume that he kept Congress from time to time advised of his doings, for Congress had the subject repeatedly before them, and passed several acts, which, if they do not expressly sanction the proceedings of the governor, do so impliedly; at all events, as the governor continued to act for so long a period, with at least the tacit approbation of Congress, and his acts remaining unimpeached for a period of more than twenty years from the time his authority commenced, and the lessor's ancestor *being an innocent purchaser*, the soundest principles of policy, as well as

good faith, require that the governor's "confirmations" should be considered, at least *prima facie*, valid. Upon both grounds, then, the plaintiffs are entitled to recover, unless the defendant has shown an older title derived under a French or British grant, or some fact that will invalidate the deed of confirmation offered in evidence on the part of the plaintiff. The first objection urged against the plaintiff's right to recover is, that the governor had no power to make the confirmation. But if the views above taken are correct, the governor was authorized by the resolutions and instructions of June and August, 1788. The second objection is, that the governor exceeded his authority. It was urged in support of this objection, that if the governor had power to *confirm*, he was limited to four hundred acres.

From the review, however, of the act of 1791, it appears that the limitation of 400 acres applies only to donations and defective claims, and not to confirmations of valid pre-existing rights. The third objection is, that Congress have the power to nullify the acts of the governor, admitting he had power to make confirmations.

This position is too outrageous in a government of laws to merit any consideration. Congress have not, however, exercised any such power. The act of 1812 only authorized the register and receiver to inquire into the validity of the governor's confirmations, and were to report their opinion to the Secretary of the Treasury, who was to lay the same before Congress, and it does not appear that Congress ever passed any law on the subject of those confirmations, on which the commissioners reported an unfavorable opinion. The Secretary of the Treasury, however, considered these confirmations void, and directed the sale of the land. But the Secretary had no power to order the sale of any lands, except those belonging to the United States. If the governor's deeds of confirmation, or patents, were obtained by fraud or misrepresentation, the deed of confirmation or patent is good until set aside by due course of law. The remedy of the second patentee, in such cases, is *scire facias*, or a bill, or information in a court of chancery. See the case of *Jackson vs. Lawton*, 10 Johns. Rep. 23, where it was decided, that "if a patent has been issued by fraud, or on false suggestion, unless the fraud or mistake appears on the face of the patent itself, it is not void, but voidable only, by suit for that purpose." The fourth objection is, "that the verdict is defective, because it does not appear that the premises lie within the limits prescribed by the resolutions of Congress passed in 1788." The answer to this objection is, that such proof was unnecessary, for by the resolution of 28th August, 1788, the improvements of the settlers "were reserved for them," whether "the improvements were within, or without, the reserved limits."

The last objection is, that the verdict does not find that the confirmee had a previous estate in the premises for the deed of confirmation to act on.

I am clearly of opinion, for the reasons heretofore given, that the confirmation was a release of the interest of the United States, and that the presumption was, that the deed of confirmation was made in a case authorized by the resolutions of June and August, 1788. If the governor's patent is to be considered as a technical deed of confirmation, then the confirmor, and all claiming under him, are estopped.



Upon the whole, the law arising on the special verdict, being in favor of the lessors of the plaintiff, the judgment of the circuit court must be reversed with costs, and the cause remanded to the circuit court of Monroe county, with directions to enter judgment for the plaintiff agreeably to this opinion, and the circuit of Monroe county will make such order in relation to improvements on the premises, if any there are, as the statute and the facts of the case will warrant. *Judgment reversed.*

If the above decision is sound (which your committee believe) upon the legal questions growing out of the legislation of Congress, upon the subject of confirmations made by the governors of the Northwest and Indiana Territories to the settlers at Kaskaskia and Vincennes, in conformity with the obligations resting upon the United States, under the cession from Virginia, to "confirm the French and Canadian settlers in their possessions," then the justice of the memorialists' claims is very apparent; and in view of the facts that the government has since sold the lands embraced in the said claims to persons, many of whom, a your committee are informed and believe, now occupy them, and have made valuable improvements thereon, which would have to be paid for by the successful claimant, under the governor's confirmations, upon a recovery at law of said lands, and the government would be bound in justice to pay to the second purchaser, or patentee, the consideration paid for said lands to the United States by them respectively, in some instances at the rate of two dollars per acre, they have concluded that the interest of the second patentee, as well as those of the government, would be advanced by granting the prayer of the petitioners, and allowing them to locate other lands in lieu of those confirmed to their ancestors by the governors of the Northwest and Indiana Territories. In arriving at this conclusion, your committee are not singular. Claims of like character have been before Congress as often as four times, and in every instance, upon investigation, have been favorably reported upon. The Senate is referred to the able report of Mr. Burnet, communicated to the Senate January 5, 1830, (5th vol. Am. State Papers, page 348,) in which this peculiar class of claims is treated with great ability and fairness. Again, on the 2d July, 1836, a law was passed confirming to the executors of James O'Harra, late of Pittsburg, Pennsylvania, six thousand six hundred acres of land, in lieu of governors' confirmations made to James O'Harra, and rejected by the same board of commissioners, and contained in the same report with the claims of the memorialists. Your committee have not entered into a full exposition of the laws bearing upon the claims of the memorialists, satisfied with referring the Senate to the decision of the supreme court of Illinois and to the act of Congress above referred to. They will conclude this report by stating, however, that no fraud was imputed to either of the claimants in the cases set out in their memorials, by the board of commissioners, who reported them "unsupported by proof before them." The committee are unanimously of opinion that the claims of the memorialists should be confirmed, and that they should be permitted to locate other lands in lieu of those confirmed to their respective ancestors by the governors of the Northwest and Indiana Territories, and with

held from them in consequence of the report of the commissioners at Kaskaskia, under the act of February 20, 1812, and report a bill for that purpose.

The committee are unanimously of the opinion that the memorialist is entitled to relief; that the original British grant was valid; and that if it had been disputable, the subsequent confirmation by Governor St. Clair passed the absolute title, and that the memorialist is legally and equitably entitled to his moiety of the same, and therefore report a bill.

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A.

REGISTER'S OFFICE AT KASKASKIA,

March 15, 1842.

DEAR SIR: Herewith you will receive a certified copy of confirmation and a plat of township No. 4 south, range 8 west; the remainder of your claim does not appear on the plats in my office. I have made a diligent search to find any other papers on file that would be of service, but have found none. In some of the bundles I found scraps with an endorsement or memorandum, that where a claim was rejected the claimant was permitted to withdraw his papers; which was the fact in this case, I have no doubt.

I am, very respectfully, sir, your obedient servant,

M. HOTCHKISS, *Register.*

ROBERT GRAHAM, Esq.,

*Ligonier, Westmoreland County, Pa.*

P. S.—I have been confined to a sick-room almost ever since you left, and at present am scarcely able to get to my office on horseback, (*a small French pony.*) In haste, truly your friend,

M. H.

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*Claimants, John Edgar and J. M. St. Clair—2208.*

Thirteen thousand nine hundred and eighty-six acres of land in the county of Randolph, confirmed to these claimants by Governor St. Clair, as per patent dated 12th day of August, 1800; and as having been granted by Lieut Col. Wilkins, British commandant in the Illinois country, to Bynton, Whorton and Morgan, and by the said Morgan, agent for Bynton, Whorton and Morgan, conveyed the sixth of March, 1774, to Richard Winston, and, as his property, sold at public sale by virtue of a judgment and execution against him in the county court of Randolph, and purchased by John Edgar, one of these claimants; who afterwards, to wit: on the 11th day of June, 1790, an equal and undivided half of the same sold and conveyed to John Murry St. Clair; which said tract of land in the patent is described as follows, to wit:

Beginning at a walnut tree on the Kaskaskia river, and thence south 30° west 2,960 perches, to a stone; thence south 61° east 888 perches, to a stone; thence north 30° east 2,080 perches, to a hickory on the bank of the Kaskaskia; and thence northwest and west, the different meanders of the river, to the place of beginning; having the ridge of rocks on the southeast, the Kaskaskia river on the northwest, the different meanders of the river to the place of beginning, and joining Nicholas Jarrot on the southwest; containing thirteen thousand nine hundred and eighty-six acres.

Confirmed by Governor St. Clair.

NOTE.—See document on this subject in the office of the recorder of the county of Randolph, book G, page 131.

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UNITED STATES LAND OFFICE,  
*Register's Office, Kaskaskia, March 15, 1842.*

I, Miles Hotchkiss, register of the land office at Kaskaskia, do hereby certify the above transcript to be a true and correct copy of the record of confirmations of ancient French claims now in my office, and that I have carefully examined and compared the same, and it is found to be correct.

M. HOTCHKISS, *Register.*

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B.

*Journal of the proceedings of the Executive Government of the Indiana Territory.*

*St. Vincennes, July 4, 1800.*—This day the government of the Indiana Territory commenced, William Henry Harrison having been appointed governor, John Gibson secretary, William Clarke, Henry Vanderburgh, and John Griffin, judges in and over said Territory.

The secretary having arrived in the Territory, and the governor being absent, July 22, 1800, the following appointments were made, &c.

*January 10, 1801.*—William Henry Harrison, esq., the governor, having arrived at the seat of government, the usual oaths were administered to William Clarke, esq., first judge by the governor. He then administered the usual oaths to the governor, and the governor to the secretary, and to the two other judges of the supreme court.

*January 10.*—The governor issued a proclamation for the meeting of the legislature, and requiring the attendance of the judges of the Territory on Monday, the 12th instant, at St. Vincennes, for the purpose of adopting and publishing such laws as the exigencies of the government may require, and for the performance of such other acts and things as may be deemed necessary, and conformable to the ordinances and laws of Congress for the government of the Territory.

STATE OF INDIANA, to wit :

This certifies that the foregoing is a correct extract from the journal of the proceedings of the executive government of the Indiana Territory.

In testimony whereof, I, William Sheets, secretary of state of the State of Indiana, have hereunto set my hand, and affixed  
[L. s.] the seal of said State, at Indianapolis, the 19th day of December, 1843.

WILLIAM SHEETS.

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C.

*Extract from the laws of the Territorial government of the Northwest and Indiana Territories.*

AN ACT supplementary to the act entitled "An act levying a Territorial tax on land," and providing for a Territorial tax for the year one thousand eight hundred and one.

\* \* \* \* \*

SECTION 21. *And be it further enacted*, That so much of the afore-recited act as permitted non-resident proprietors to pay their taxes to the treasurer of the Territory, also so much of said act as authorized the auditor to receive the entries of lands of non-resident proprietors, and all such other parts of said act as come within the purview of this act, be, and the same are hereby repealed. This act, together with such parts of the afore-recited act as are not repealed by the alterations and provisions of this act, shall continue and be in force from and after the passing hereof, until the first day of March, in the year of our Lord one thousand eight hundred and two; and for the purpose of collecting taxes that may before that time be imposed under this or the above-recited act, but for no other purpose, it shall continue in force till all such taxes are collected, and no longer.

EDWARD TIFFIN,

*Speaker of the House of Representatives.*

ROBERT OLIVER,

*President of the Council.*

Approved the 9th December, A. D. 1800.

A. ST. CLAIR.

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I hereby certify that the foregoing is a true copy from the pamphlet laws of the Northwestern and Indiana Territories in my possession.

PETER FORCE.

WASHINGTON, June 3, 1848.

*An account of the receipts and expenditures for the year 1800.*

GOVERNMENT OF THE WESTERN TERRITORIES—DISTRICT NORTHWEST  
OF THE OHIO RIVER.

For compensation of the governor, the judges, and the secretary  
this district.

TO ARTHUR ST. CLAIR, GOVERNOR:

January 6, warrant No. 443.....	\$5
May 10, warrant No. 723.....	5
September 5, warrant No. 1081.....	5
October 10, warrant No. 1227.....	5

STEAMBOAT "MARTHA WASHINGTON."

[To accompany bill H. R. No. 328.]

APRIL 7, 1854.

Mr. PARKER, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom was referred the communication from the Secretary of the Treasury in regard to the propriety of an appropriation for prosecuting persons charged with burning the steamboat Martha Washington, have had that matter under consideration, and report as follows:*

That upon examination of the letter of the Secretary in this behalf, and that of S. C. Burton, esq., accompanying the same, to which letters the committee refer, and from the great interest it is well known this matter has excited in the mind of the whole country for about two years, the committee cannot but concur with the Secretary in his statement, that "it is evident, in this case, the *general* interest in the punishment of the crimes alleged far outweighs the *local*." They therefore deem an appropriation to defray expenses incurred, and that may be incurred in a vigilant prosecution of the supposed criminals in this behalf, to be altogether just and proper. They therefore report the bill herewith.



WADE ALLEN.

APRIL 21, 1854.—Laid upon the table and ordered to be printed.

Mr. R. JONES, from the Committee on the Post Office and Post Roads,  
made the following

REPORT.

*The Committee on the Post Office and Post Roads, to whom was referred  
the petition of Wade Allen, of Montgomery, Alabama, report:*

That Ward Taylor held a contract, commencing 1st January, 1838, and expiring 30th June, 1842, for four-horse coach service on route 3677, Montgomery to Mobile, at \$23,750 per annum; that in the year 1839, the service was re-let, in order to increase the expedition thereon, to Allen & Kitchen, and Ward Taylor's service discontinued in consequence; that the Postmaster General, by the thirteenth section of the contract with Taylor, was empowered to curtail or discontinue the service under the same, on allowing one month's extra pay on the amount of the service dispensed with, provided he wished to put a higher grade of service on the route, or to lessen the service on the same.

Before the increase of the service on the above route, and the consequent re-letting, the petitioner and one Kitchen had become the assignees of Ward Taylor's contract for carrying the mail on said route, and at the re-letting the new contract was assigned to them; and they now petition Congress to allow them the one month's extra allowance for the annulment of the old contract, which they (Allen & Kitchen) claim to be entitled to under the stipulations of the contract between Ward Taylor and the Post Office Department.

The part of the agreement relied upon is in these words: "The Postmaster General may curtail or discontinue the service, he allowing one month's extra pay on the amount dispensed with, in order to place on the route a greater degree of service, (first offering it to the contractor at the price at which it can be obtained) or whenever the public interests require such discontinuance or curtailment for any other cause."

The Postmaster General, in a letter to the committee dated April 17th, 1854, states that the above stipulation is not in pursuance of any legal requirement, but is a matter of agreement between the contracting parties, in order that changes of service may be made whenever required by the public exigencies. He goes on to say, that the one month's extra pay on the service dispensed with, is to afford the contractor some indemnity in case of discontinuance or curtailment of his service contrary to his wishes, but it is not the rule of the department to make such allowance where, under a re-advertisement, the contractor



for the old service becomes the contractor for the new; that he not departed from this rule, and he can learn of no cases of departure by his predecessors; that it is a rule to withhold the extra pay when it appears that the old contractor sustains no damage, and also in cases where he either applies for or assents to a change of service.

In this case it does not appear, nor is it alleged, that the petitioner has sustained any damage: his claim for one month's extra pay has been refused by the department, under the interpretation given by it to the contract. We think that interpretation not only legal, but just and equitable, and therefore recommend that the petitioner's claim be allowed.

CALIFORNIA—REFUND MONEY TO STATE OF, FOR SUPPRESSING INDIAN AGGRESSIONS.

[To accompany bill H. R. No. 92.]

APRIL 26, 1854.

Mr. McDougall, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred House bill No. 92, entitled "A bill to refund to the State of California the expenses incurred in suppressing Indian aggressions within that State," report:*

That the bill so referred is intended to provide for the satisfaction of a claim made by the State of California against the United States, for the amount of moneys expended by said State in suppressing Indian hostilities within the State, and upon the lines of emigration from the Atlantic States. The documents and papers presented to the committee, in explanation of the claim, are so voluminous as to render it inconvenient to embody them in this report, and the committee, therefore, present only such of the leading facts upon which the claim is made as are necessary to a general understanding of its character.

The southern, eastern, and northern border of California was formerly, and to a great extent still continues to be, occupied by Indian tribes, many of which are both numerous and warlike. The discovery of gold, and the consequent rush of emigration, and the rapid occupancy of the State, particularly the mountain and mining districts, had not been anticipated by the general government, consequently no adequate provisions were made to guard against or prevent collisions between the emigrants and the Indian inhabitants. No treaties had been negotiated, and the state of the country was such as to render it impracticable for the general government to maintain there an efficient military force, on account of the small pay, and the strong temptation to desertion.

Collisions between the Indian and white population commenced as early as 1849; and during the years 1850, 1851, and 1852, formidable and systematized attacks were made by several of the Indian tribes upon the white settlements in California and the emigrants arriving overland.

That the federal government had not furnished, and could not furnish, adequate protection, appears from a correspondence as late as April, 1852, between the Executive of the State of California and General E. A. Hitchcock, commanding the Pacific division of the United States army. By letter bearing date the 8th of April, 1852, Governor Bigler informed General Hitchcock of the resumption of hostilities by

the Indians of the north, and, after a statement of the facts, asked the aid of the federal government, at the same time suggesting that if the government had not a sufficient number of troops to detail for this service, he would promptly issue a call for them whenever so requested. To this communication General Hitchcock, by letter dated April 10, 1852, made a reply, from which the following is extracted :

"I trust your excellency, and the considerate portion of the population of California, will not infer, from the existence of such evils, so naturally growing out of the condition of the country, any want of disposition, on the part of the general government, to render every protection possible under the circumstances.

"That the number of troops, both in California and Oregon, is fewer than the nature of the service requires, I have duly represented to the War Department; and not long since, a body of five hundred men reached here, which I suppose to be but a part of those designed to be sent on my application.

"If there has seemed any reluctance or delay in sending troops to this military division, the reason is to be found not in any want of disposition on the part of the government to do full justice to the claims of California, but because it is well known to be almost impossible, owing to the peculiar temptations to desertion, to hold troops embodied and efficient for service anywhere on this coast. I will, however, lose no time in communicating to the War Department the views and wishes of your excellency, and, in the mean time, will make the best use of the force under my command for the protection of the country.

"In regard to the militia of the State, I have supposed that your excellency is aware of my entire want of power to give any sanction to their being employed, and that I can only recognise such a force when called into service by the President of the United States.

"I have the honor to be, sir, very respectfully, your obedient servant,

"E. A. HITCHCOCK,

*"Colonel 2d Infantry, Bt. Brig. Gen. Commanding."*

"His Excellency JOHN BIGLER,

*"Governor of California."*

Upon a full inquiry into the facts, as well as from the communication of the commanding general just quoted, it appears that the regular force of the United States was altogether inadequate to the service required in California, and that the last mentioned officer did not consider himself authorized to employ the volunteer force of the State, without direct authority from the President. The only alternative left the executive of the State of California, was, upon his own responsibility, and that of the State legislature, to take such steps as the emergencies of the country might demand.

Upon an examination of the papers laid before the committee, it appears that, during the years 1850, 1851 and 1852, the State of California had occasion to send out a volunteer force on ten different occasions, to different and generally remote parts of the State, for the suppression of Indian hostilities; since the year 1852, it is not represented that further expeditions have been demanded, or that the gov-

ernment force has not been sufficient for the purposes of defence. It is the expenses incurred during the expedition referred to that is the ground of the present claim.

The necessity for these expeditions appears to have existed from the correspondence and documents in relation to each presented to the committee.

Early in the year 1850, a settlement was made on the Colorado river, at the present site of fort Juma, the point where the emigrant road by Santa Fé and El Passo crosses that river. On the 23d of April, 1850, the Juma Indians, a numerous and warlike tribe, and who had heretofore been friendly, made a sudden attack on the settlement, killed eleven men and drove the remainder in towards Los Angeles; and thereupon confederating with other tribes, threatened the whole southern portion of the State with a general Indian war, as well as to cut off the entire emigration by the south.

These facts, with the additional fact that the United States could not furnish the requisite protection, were represented to the Governor of California, who upon the urgent demand of the citizens of the south part of the State, ordered a military force to be organized for their protection and the protection of the emigrant route.

The sheriff of the county of El Dorado, by letter of the 23d October, 1850, informed the governor that the Indians in that county had assembled in large numbers; had sent their women and children into the mountains, and besides having committed numerous murders, threatened to destroy the towns of Weberville and Ringgold, and had given general notice to the mariners and citizens that they must leave immediately. He represented the number of Indians to be from twelve to fifteen hundred; and that they were on the emigrant trail from Salt Lake, and would cut off the in-coming emigration; and he urged strongly the necessity of a considerable organized force for the purposes of protection. Shortly after this letter was written, a general war broke out in El Dorado county, and the sheriff of the county was authorized by the governor to call out a force sufficient to compel a peace. The sheriff accordingly proceeded to organize a volunteer force and operate against the hostile Indians, and after several engagements and considerable loss of life, succeeded in bringing them to terms.

On the 20th January, 1851, Adam Johnson, Indian agent for the United States, made a communication to the governor advising him that the Indians of the Mariposa and Fresno had made preparations for a general war, and had already commenced hostilities; and after detailing their movements, and the particulars of a brutal massacre of a camp on the Fresno, he solicits, for the people of that region, such aid from the State government, as will enable them to protect their persons and property.

The communication of Mr. Johnson was soon followed by one from James Barney, the sheriff of Mariposa county, from which the following is an extract: "Since the departure of Mr. Johnson, the Indian agent, they have killed a portion of the citizens on the head of the San Joaquin river, driven the balance off, taken away all the moveable property, and destroyed all they could not take away; they have invariably murdered and robbed all the small parties they fell in with

between here and the San Joaquin. News came here last night that seventy-two men were killed on Rattlesnake creek; several men have been killed in Bear valley. The fine gold gulch has been deserted, and the men came in here yesterday. Nearly all the mules and horses in this part of the State have been stolen, both from the mines and the ranches—and I now, in the name of the people of this part of the State, and for the good of our country, appeal to your excellency for protection."

The preceding representations, with others of a similar nature, induced the Executive, with the approbation of the State legislature, then in session, to place in the field a sufficient force to furnish the protection called for, and force the Indians to terms of peace.

The other occasions upon which the State of California thought it proper to place her own military force in the field, correspond substantially with those already stated in all their essential features. From an official statement laid before this committee in relation to the disturbances in the northern part of the State near the line of Oregon, it appears that in the space of a few months one hundred and thirty white persons were killed, and \$250,000 of property destroyed. These outrages led to two of the expeditions referred to.

Upon a careful consideration of all the facts presented, it appears that, to a great extent, the defence of the people of the State of California against Indian aggression, has devolved on that State, owing to the insufficiency of the troops of the United States on the Pacific coast.

This committee are unable to correctly ascertain the specific merits of all the items that make up the claim presented by the State of California; but, from an examination of the official reports of the officers of that State, it appears that some care has been bestowed by the proper auditing officers in ascertaining and determining the merits of those items, and as the State has assumed and discharged the liabilities incurred, there appears no good reason to suspect that unjust allowances have been made.

The aggregate of expenses and liabilities incurred on account of these Indian expeditions appears, from the report of the comptroller of the State of California on the 20th of December last, to have amounted to the sum of \$924,259 65.

The question remaining for consideration is, whether or not the general government is properly chargeable with their expenditures?

It is the opinion of this committee that the obligation of the federal government to furnish specific and particular defence to each several State, is included in its obligation to maintain the "common defence" of the confederacy. That invasions from abroad, insurrections at home, and aggressions from the savage tribes inhabiting our borders, are alike within the protective province of the federal government. Congress possesses the exclusive power "to raise and support armies in time of peace," and possesses the power to call forth the militia "to suppress insurrections and repel invasions." In the tenth section of the first article of the constitution, the States stipulate that they will not "keep troops or ships of war in time of peace."

The conclusion necessarily follows, that the general government is, *by the implied, if not the express, terms of the federal compact, bound*

to furnish and maintain such military force as the exigencies of the States may demand; and it clearly appears from the legislative history of Congress, that such has always been the understanding of the government.

By act approved March 21, 1828, the Secretary of War was required to pay the claims of the militia of the State of Illinois and the Territory of Michigan, called out by any competent authority, on the occasion of the then recent Indian disturbances, and that the expenses incident to the expedition should be settled according to the justice of the claims. (See Laws of United States, vol. 4, p. 258.)

By act approved March 1, 1837, an appropriation was made for the payment of the Tennessee volunteers, called out by proclamation of Governor Cannon, on the 28th of April, 1836, to suppress Indian hostilities; and a direct appropriation was also made to Gov. Cannon to reimburse him for moneys expended on account of such volunteers. (See Laws U. S., vol. 5, p. 150.)

By act approved March 3, 1841, a direct appropriation was made to the city of Mobile, for advances of money and expenses incurred in equipping, mounting, and sending to the place of rendezvous, two full companies of mounted men, under a call from the Governor of Alabama, at the beginning of the hostilities with the Creek Indians. (See Laws, vol. 5, p. 435.)

By act of August 11, 1842, \$175,000 was appropriated as a balance for the payment and indemnity of the State of Georgia, for any moneys actually paid by said State on account of expenses in calling out her militia during the Seminole, Cherokee, and Creek campaigns, or for the suppression of Indian hostilities in Florida and Alabama. (See Laws, vol. 5, p. 504.) By act approved August 29, 1842, a similar appropriation was made to the State of Louisiana. (See Laws, October 5, p. 542.)

The question here presented appears to have been distinctly raised in 1831 upon a claim presented by the State of Missouri. By act approved March 3d of that year, Congress made an appropriation for the service of the Missouri militia against the Indians, "provided that the Secretary of War shall, upon full investigation, be satisfied that the United States are liable for the payment of said militia, under the second paragraph of the tenth section of the first article of the Constitution of the United States." (See Laws, vol. 4, p. 465.)

General Cass, then Secretary of War, examined the subject submitted, and gave the opinion of the government as to its constitutional obligations, affirming the liability of the government, and directing payment to be made to the State of Missouri.

Instances of similar legislation might be cited, but it is believed that but little doubt can exist either as to the constitutional obligation or the exposition given by Congressional legislation.

The amount claimed by the State of California appears to be extravagantly large; but considering the number of distinct expeditions made into different and remote regions of the State, running through a period of three years, the extraordinary condition of the country, the extraordinary cost of everything—subsistence, transportation, and material—it will *probably be found that there is no unwarrantable dispro*

portion between the amount expended by California and the amount of cost to the United States government in carrying on other wars.

The committee being satisfied that the requisite protection was furnished by the federal government to the State of California seeing no good reason to question that the amount claimed was expended in good faith, for the purpose of protection, report said back to the House, with an amendment, and recommend its passage.







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SIoux LANDS OR RESERVATION IN MINNESOTA TERRITORY.

[To accompany bill H. R. No. 338.]

APRIL 28, 1854.

Mr. DANIEL B. WRIGHT, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred the memorial of the Sioux half-breeds, having considered the same, beg leave to report:*

That under the treaty of Prairie du Chien, of date July 15, 1830, and the ninth article of said treaty, it was stipulated and agreed between the United States and the Sioux bands of Indians, that said Indians might have permission to bestow upon the half-breeds of their nation the tract of land within the following limits, to wit: "Beginning at a place called the Barn, below and near the village of the Red Wing chief, and running back fifteen miles; thence in a parallel line with Lake Pepin and the Mississippi about thirty-two miles, to a point opposite O'Bœuf river; thence fifteen miles to the grand encampment opposite the river aforesaid"—the United States agreeing to suffer said half-breeds to occupy said tract of country; they holding by the same title and in the same manner that other Indian titles are held.

And in the *tenth* article of said treaty it was further agreed that the President of the United States might thereafter assign to any of the said half-breeds, to be held by him or them in *fee simple*, any portion of said tract not exceeding a section of six hundred and forty acres to each individual.

Said tract of country thus assigned to said half-breeds lies in the southern part of the Territory of Minnesota, on the western side, and at the head of navigation of the Mississippi river; it contains, by estimation, three hundred thousand acres, and includes within its limits some of the most fertile lands in the Territory of Minnesota.

The Indian titles to the whole of the country surrounding said reservation are now extinguished, and the bands to which said surrounding country belonged have removed westward, and many of the less cultivated of said half-breeds are desirous of disposing of their interest in said reserve and following their Indian relatives. Some have already gone. Justice, humanity, and sound policy alike second their desire; for all experience demonstrates the utter incompatibility of the uncivilized Indian with civilized life. Many of them, however, are represented as being educated, and having judgment and experience suffi-

cient to take care of their own interest. A number of them are said to be men of much intelligence, possessing property, and having become citizens of Minnesota and of the adjoining States. Some of them have served in the legislature, and filled offices of honor and trust in the Territory, while others are engaged in agriculture, mercantile and other profitable pursuits. With them, at least, the object of the fostering policy of the government has been attained, in fitting them for civilized life; for, in point of intelligence and civilization, many of them would compare favorably with their white brethren.

The term "half-breed," as applied by some to them, is a misnomer, for it was intended to include all those having an admixture of *white* and Indian blood in their veins, in whatsoever degree.

The actual title of those persons to the reservation in question is that of Indians, although many of them have a preponderance of white blood. The title of the Indians must be considered with reference to their mode or habit of life. Their hunting-grounds are as much in their possession as are the cleared fields of the whites, and their undisputed right to exclusive enjoyment beyond dispute. Yet this is a right to possess or hold their lands as joint tenants, or as tenants in common; and no one of such community can dispose of an integral part of their common property, nor is any white citizen authorized to settle upon the same.

The laws and treaties of the United States contemplate the Indian Territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the government of the Union; hence the importance to the inhabitants of the Territory of Minnesota that said reservation should be held in severalty by said half-breeds, with title in fee, or by their assignees, as citizens of the United States; for, under existing circumstances, they are deprived of the right of way for thirty-two miles on the Mississippi river—the natural outlet for their produce and commerce. Having no right to open roads through said reservation, the citizens of Minnesota are precluded the use of those natural advantages to which their position entitles them.

Said half-breeds have repeatedly applied to the government of the United States to have their lands allotted to them in fee, as stipulated in the tenth article of said treaty; but the President has hitherto wholly failed to assign to said half-breeds their lands in fee, upon the ground, as your committee is informed, that there was no stipulation in said treaty as to whether the said half-breeds should incur the expense of such allotment. Said half-breeds, in 1851, offered to take one hundred and fifty thousand dollars (\$150,000) for their said reservation; but not being a tribe or nation in the legal sense of the term, they had no power to treat, and the proposition was rejected by the Senate of the United States; nor can their Sioux relatives treat for their half-breeds in relation to said reservation, since they have parted with all the title they held to the same.

Said half-breeds, holding by the uncertain and precarious tenure of Indian title, have no inducement to improve their homes in said reservation; and thus the fairest portion of Minnesota bids fair to remain a *desert, unless the stipulations of the treaty can be carried into effect.*

Justice and sound policy alike require that this should be done. They look to our government for protection, rely upon its kindness, invoke its humanity, and appeal to its power for relief.

Your committee having carefully considered the premises, and believing that the relief sought ought to be granted, report herewith a bill, which they think will attain the end desired, and recommend its passage.

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DEPARTMENT OF THE INTERIOR,  
*Office Indian Affairs, March 4, 1854.*

SIR: The 9th article of the treaty of the 15th of July, 1830, with the Sacs and Foxes, and certain tribes of the Sioux, &c., and which treaty was ratified on the 24th of February, 1831, is in the following words:

"ART. 9. The Sioux bands in council having earnestly solicited that they might have permission to bestow upon the half-breeds of their nation the tracts of land within the following limits, to wit: Beginning at a place called the Barn, below and near the village of the Red Wing chief, and running back fifteen miles; thence in a parallel line with Lake Pepin and the Mississippi, about thirty miles, to a point opposite Beef or O'Bœuf river; thence fifteen miles to the Grand Encampment opposite the river aforesaid,—the United States agree to suffer said half-breeds to occupy the said tract of country, they holding by the same title and in the same manner that other Indian titles are held."

The 10th article, after designating lands for the half-breeds of other tribes, parties to the treaty, contains the following proviso in respect to the various grants made:

"The President of the United States may hereafter assign to any of the said half-breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section of six hundred and forty acres to each individual. And this provision shall extend to the cession made by the Sioux in the preceding article."

The object of setting apart the individual reserves above referred to for the half-breed Sioux, has, from the year 1836 until the present time, given rise to an extended correspondence between the Indian department and the agents, attorneys, and friends, of the parties interested; but so far, to all appearance, the questions connected therewith are now as far from being settled as they were when first brought to the notice of the Indian Office.

In a letter dated the 25th of July, 1836, Lawrence Taliaferro, esq., the then Indian agent at St. Peters, informed this office that the names of sixty-four half-breeds had been deposited with him, who stood prepared either to cede to the United States their reserve on Lake Pepin, or to receive a confirmation of title to the same, and a fair division among those entitled, under the provisions of the treaty of 1830. "This precautionary measure," he was requested to say, "had been adopted by the more intelligent half-breeds, in consequence of learning that an attempt is about being made by one portion (a minority) of the

claimants to defraud the majority out of their just proportion of the lands under said treaty, under the influence of certain white speculators."

On the 3d of March, 1837, an act of Congress was passed appropriating \$1,000 to carry into effect the provisions of the 9th and 10th articles of the treaty of 1830; but the money does not appear to have been drawn from the treasury, for the reason stated by Commissioner Crawford in his report of the 7th of January, 1840, to Secretary Poinsett, that it could not be applied, *without legislative authority*, beyond running the *exterior lines* of the tract, which, it seemed to him, "could not have been attended with any advantage, as the body of the land is designated with precision in the treaty."

There is also on file a memorial dated at Fort Snelling, St. Peters, August 25, 1837, signed by Sioux half-breeds and their friends, asking the President to have the half-breed reservation at Lake Pepin "surveyed and divided among the proper claimants as soon as practicable," so that the intention of the treaty may be carried into effect, and that Governor Dodge, then superintendent of Indian affairs, and Colonel Stambaugh of Fort Snelling, or either of them, be appointed "to have the said lands surveyed and divided equitably between them as the treaty prescribes, believing that a division so made will give general satisfaction to all interested." They also appointed their friend, Col. S. C. Stambaugh, their representative at the city of Washington. An addition to the memorial made in this city, and dated the 27th of September, 1837, signed by, or on behalf of, several half-breeds, asks that Colonel Stambaugh might be appointed to divide their reservation.

No action appears to have been had upon this memorial or its supplement.

In October, 1838, L. T. Pease and Wm. L. D. Ewing, who had been appointed commissioners to execute certain provisions of the Sioux treaty of 1837, transmitted from Fort Snelling, with their favorable recommendation, a memorial to Secretary Poinsett, signed by half and quarter-bloods of the Sioux nation, praying for the appointment of Alexis Bailly and Samuel C. Stambaugh, to make a division of the reservation among those entitled, and asking that half and quarter-bloods may participate equally in the benefit of the grant.

On the 7th of January, 1839, Commissioner Crawford reported adversely to the memorial to Secretary Poinsett; and the reasons for his conclusions will be found embodied in the following extracts therefrom:

"The first part of the request, (for a division of the reserve among the half and *quarter-breeds*,) it appears to me, cannot be granted. The treaty limits the persons entitled to any interest in this reservation to *half-breeds*. There is no authority for making a different disposition of the land. \* \* \* \* \* The treaty, it is apparent, contemplated equality of distribution among families; for it authorized the President to assign to any of the half-breeds a section of land, or six hundred and forty acres, and no more. This authority, by the way, does not seem to have looked to a general distribution even among the half-breeds, as the memorialists seem to suppose; for its language is, that *the President may hereafter assign to any of the said half-breeds*, to be

held by him or them in fee simple, &c.: thus leaving it discretionary with him to grant to those to whom it would be beneficial, or for whose advantage, for any good reason, he thought fit to exercise the power.

"I also think the recommendation to Congress, which is asked for, to divide the remainder of the land upon principles of equity among the memorialists, (half and quarter-breeds,) ought to be withheld for the reasons given, against the first branch of the prayer, they being as strong as against the second.

"There is another, to my mind, great objection to all parts of the memorial, and the wishes expressed. The ninth article grants the reservation to the occupancy only of the half-breeds, who are to hold it by the same title, and in the same manner that other Indian lands are held. The fee simple is in the United States, and the whole will revert to them when the said half-breeds cease to occupy the property, unless the President, under the tenth article, should grant to some, or all of them, a section of land respectively in fee simple. So far he has authority to go. When he shall think fit to do so, depends upon his own view of the matter, and whether he shall do it at all; and the treaty is fulfilled whether his judgment leads him to the one conclusion or the other. But, having patented one section of land to each half-breed, all the grants in severalty contemplated by the treaty are made, and it is executed to its full and even contingent extent. The legislative authority can give the residue of the land to the Indians in fee, but I see no public good, or probable advantage to them, that would result from so doing."

Upon this report, Secretary Poinsett endorsed as follows: "I concur in the views taken by the Commissioner in this communication. J. R. Poinsett."

In a letter written by L. T. Pease, one of the late commissioners, and dated at Hartford, Conn., on the 22d of January, 1839, he assigns at length, at the request of Messrs. Stambaugh and Bailly, the various reasons which induced him to join his associate, Mr. Ewing, in recommending a division of the half-breed tract among those entitled. He urges with great earnestness the policy, propriety, and justice of the measure.

On the 25th of January, 1839, the Hon. James Buchanan addressed a letter to President Van Buren, enclosing one from the Hon. James D. Doty, (also addressed to the President.) The object of these letters seemed to be to controvert the idea that the grants of fee-simple estates, contemplated by the treaty of 1830, to Sioux half-breeds, should be limited to those of half white and half Indian blood only. Mr. Buchanan expressed his astonishment at reading the opinion of Commissioner Crawford, and said he had always understood the term "half-breeds" meant neither more nor less than those of mixed blood, "without regarding the exact proportions." Such, also, he said, was the opinion of several members of the Senate practically acquainted with Indian affairs.

Mr. Doty said it was important to the interests of the frontier "that the half-breeds should be settled on the tract according to the intent of the treaty, and asked the appointment of some person to examine the tract, and assign to each of the half-breeds a section of land. He also

deprecated the attempt to circumscribe the meaning of the expression "half-breeds," as suggested by the Commissioner, and appealed "to the writers upon that country, and to the testimony of the oldest and most intelligent of its inhabitants, to prove that the words have been used for more than half a century to designate that class of population which are of *Indian extraction*."

On the 22d of February, 1839, Messrs. Stambaugh and Bailly, as agents of the half-breeds, addressed a long letter to Secretary Poinsett for the purpose of controverting the meaning attached by Commissioner Crawford to the word half-breeds, and to urge their own appointment, to carry out the provisions of the ninth and tenth articles of the treaty, in accordance with the unanimous recommendation of those interested. They say, in reference to the number entitled: "We believe there are about one hundred and fifty who were born in 1830. The quantity of land to be divided may be estimated at four hundred and eighty sections. Thus, there would be about three hundred and thirty sections to be held under the present title."

Secretary Poinsett, on the 28th of the same month, replied that the decision to which they referred was not founded on the technical meaning of the word "half-breeds," which he believed "*included all those of Indian descent*," but "*upon the inexpediency of making any division*, and vesting the fee of those lands in the claimants. At the same time," "he could not recommend such a measure to the President without some reservations which will prevent the land from falling into the hands of other than those of the claimants, and this cannot be done *without legislative interposition*." The Secretary added that it was the intention of the department to postpone all action upon the subject until the next session of Congress; but if Messrs. Stambaugh and Bell desired it, the papers would then be submitted to that body.

On the 1st of March, Colonel Stambaugh replied, at length, to the letter of Secretary Poinsett, and pronounced a protest against a division of the reserve, purporting to be signed by a large number of the "half-breeds," which had been filed at the Indian Office in the fall of 1838, "a base fabrication," and entered into a minute detail of facts, to prove the truth of the assertion. Accompanying his communication are letters from Messrs. B. F. Baker, Franklin Steele, and Alexis Bailly, approving the same, as well as a power of attorney, dated the 2d of October, 1838, from many of the half-breeds of the Madawankanton band of Sioux Indians, (some of whom had signed the "protest,") authorizing Colonel Stambaugh and G. W. L. Ewing to act as their agents in securing a division of the land under the provisions of the treaty, in accordance with the memorial previously presented. Colonel Stambaugh intimates, in pretty plain terms, that Major Taliaferro, the Indian agent, who, he said had a personal interest in having the grant limited to half-breeds only, was the author of the protest.

To this communication Secretary Poinsett replied, on the 20th of March, stating that "the objections raised by the department to the project of a division was in no respect personal to Messrs. Stambaugh and Bailly, who he had no doubt were fairly selected by the parties to represent their interests and effect the division, but arose from its

obligation to protect these people from the effect of their own improvidence, which can only be done by legislative provision. The department," he added, "could not authorize the preliminary measure" of dividing the tract, but would oppose no objection—it being expressly understood that Messrs. Stambaugh and Bailly would not be entitled to any remuneration from the government for their labor, "unless especially provided for by Congress hereafter."

On the 7th of March, 1840, Commissioner Crawford submitted to the Secretary of War a report on the letter of the Hon. John Bell, chairman of the Committee on Indian Affairs of the House of Representatives, addressed to Secretary Poinsett on the 27th of February, explanatory of the causes which delayed or prevented the execution of that provision of the treaty "of 1830 respecting fee simple grants to half-breeds." He contended that, in assigning the reserve for the occupancy of the half-breeds in common, the treaty, as he construed it, was fulfilled—"all the rest belonged to executive discretion." The President could grant a fee simple of a section of land to one or more individuals of the tribe, "that he might think meritorious and worthy, and likely to improve the favor," &c. Of the propriety of granting the prayers of the memorialists for a division of the whole tract, Congress, he contended, are to judge. The following extracts from the report will show the reasons which led Commissioner Crawford to these conclusions:

"The land set apart by the treaty for the half-breeds never was granted to the United States. It was a donation by the Indians to their mixed bloods, with the consent of the United States, in whom the fee simple was vested. The grant, therefore, was limited to the Indian right—that is, to hold by occupancy: to this the United States consented, and so far only is there any contract or right, upon which they could insist, vested in the half-breeds by the 9th article. The claimants go further, and, in all their applications and communications, speak of a division into sections for their use, and in the memorial of last year, as well as in that now presented to Congress, of an equitable apportionment among them of the surplus to be granted in fee simple, as the treaty prescribes."

This is an error. The 10th article contemplates neither in letter nor spirit a general division into sections among them, much less a ratable assignment of what would be left, after such allotments; nor is there any executive power to do either, if either had been thought politic or for Indian interest.

The tenth article authorized the President to grant; that is, he "may hereafter assign to any of said half-breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section of six hundred and forty acres to each individual." The treaty was executed by the assignment of the Indian title, and the occupation by the half-breeds of the land in common; all the rest belonged to executive discretion, which was, as I construe the treaty, to be exercised, if at all, in granting the fee simple, or a section of land, to one or more individuals, that he might think meritorious, and worthy of, and likely to improve the favor, but not looking, in any event, to a division, and, if



possible, still less to an apportionment of the land that, it is said, will be left, if a section should be given to each mixed-blood.

"It may be proper to grant the prayer of the memorial. Of this, Congress are to judge; for without the authority and sanction of the law, the power, it seems to me, is wanting. Should the legislature so declare its pleasure, it will be the duty of the department to see it executed."

Secretary Poinsett, in transmitting the above mentioned report to the Hon. John Bell, on the 13th of March, 1840, says: "In this report the department fully concurs, and is of the opinion that, without some restriction, these lands would, if divided as prayed for, in a short time fall into the hands of speculators." Secretary Poinsett at the same time transmitted copies of all the papers in reference to the matter which were of file in the department.

On the same day, Colonel Stambaugh addressed a letter to Secretary Poinsett, enclosing a memorial to the President from certain Sioux half-breeds, and also a letter from Alexis Bailly, on the subject of the reserve.

On the 12th of March, 1839, Secretary Poinsett caused a "*public notice*" to be published in certain newspapers in Missouri and Iowa, to the effect that no sale of the undivided interest held in said half-breed reserve, "will be recognised or regarded as valid by the President of the United States."

A memorial of about sixty relatives of the Sioux Indians, dated at St. Peters on the 24th of June, 1839, was addressed to the President, urging the policy and expediency of a division, and announcing the appointment of Messrs. Stambaugh and Bailly, and N. Boilvin, to represent their interests. They recommend the passage of a law by Congress authorizing a division of the tract, after supplying *individual* reservations upon the same principles.

On the 17th December, 1839, Governor Dodge, of Wisconsin, enclosed to this office a copy of a preamble and resolution of the legislature of the Territory of Wisconsin, instructing the delegate from the Territory "to use his influence to procure the passage of a law directing the early survey and apportionment in fee simple among the claimants," in order to prevent the suffering and continual and heavy loss arising from the uncertain tenure by which they now hold their reserve. The receipt of that resolution was acknowledged on the 23d of January, 1840.

On the 22d of February, 1840, the Hon. Wm. W. Chapman, of Iowa, enclosed a memorial of the legislative assembly of that Territory, approved the 31st December, 1839, urging the policy of a division of the Lake Pepin reserve, as a measure that would "tend greatly to promote the prosperity and security of that portion of the Territory," &c. Its receipt was acknowledged on the 13th of March, with a copy of the report of the 7th of that month, showing the views of the department.

On the 30th of March, 1840, Commissioner Crawford, in compliance with the verbal request of the Hon. John Bell, chairman of the Committee on Indian Affairs of the House of Representatives, submitted an estimate for the purchase of the half-breed tract. The salary of the commissioner and secretary, and the incidental expenses, he estimates at \$2,500, and the 384,000 acres of land contained in the reservation,

at one dollar per acre. He says the tract, being exactly thirty-two by fifteen miles, would, but for the meanders of the Mississippi river, contain only 307,000; but these meanders, he thinks, will give upwards of 600 sections, or 384,000 acres. He supposes that two hundred may comprise the whole number of half and quarter-bloods, and thinks, as they are in some measure individual owners, that "each of them should sign the compact for the purchase of the reserve."

On the 9th of July, 1840, Colonel Stambaugh addressed a letter to the chairman of the Committee on Indian Affairs of the House of Representatives, calling attention to the memorial of the half-breeds of August, 1837, proposing the appointment of commissioners to divide the tract among the claimants of mixed blood, who, he supposed, did not amount to two hundred persons; and proposing, on their behalf, to relinquish the balance of the reserve, "say 256,000 acres, for the sum of \$200,000." To show the impolicy of not assenting to his proposition, Colonel Stambaugh referred to the case of the Sacs and Foxes at the Des Moines Rapids, in which those Indians "sold their common interests for a mere trifle, and afterwards finding that the purchasers might procure a change of tenure, they sold the same interest to others, which gave rise to endless litigation."

Governor Doty, in a letter addressed to Secretary Bell, and dated on the 30th of June, 1841, urged the policy of purchasing the half-breed tract, and states that the reservees are anxious to sell their interest to the United States. He proposes, if so instructed, to treat with them.

In a letter dated in this city, in July, 1841, the Hon. John W. Parker, of the legislature of Iowa, urges upon the Secretary of War the policy of a division of the Lake Pepin reserve in severalty; and, by the way of illustrating the policy of his advice, refers to the case of the Sacs and Foxes at the Des Moines Rapids, which, in consequence of the Indians having sold their interests in the common reserve, "has involved that whole country in litigation, and the Territory in great expense."

On the 30th of July, 1841, Colonel Stambaugh again called the attention of Secretary Bell to the subject, and referred him to a member of the Iowa legislature, and the late delegate from that Territory, (both then in this city,) for information as to the policy and expediency of the measure of dividing the half-breed reserve.

In his annual report of the 10th of September, 1845, speaking of half-breed reservations generally, Superintendent Harvey, of St. Louis, expresses the opinion that the interests of the Indians, in all cases, would be advanced by delivering to them patents for their reservations, with authority to dispose of them by sale, "as they would, nine times in ten, make a better sale with a patent than otherwise."

Commissioner Medill, in replying to a letter of the superintendent at St. Louis, said, in September, 1847, that he agreed with his predecessor as to the impolicy of dividing the half-breed tract, and allotting particular tracts to the claimants respectively in severalty, to be held in fee simple; but that the suggestion of General Milburn, (whose letter Superintendent Harvey had enclosed,) that "measures be adopted to extinguish the Indian title to the land, would receive due consideration."

In February, 1849, the Hon. H. Sibley enclosed a letter from Dr. D.

Dale Owen, geologist, to a Mr. Brisbois, in which Dr. Owen says the half-breed tract "is a mineral region," and that "lead will be found there, and probably copper also." Mr. Sibley therefore hoped, in view of its value as such, that the department would favorably consider the proposition which he had made, as attorney for a large majority of the claimants, to sell the tract.

Commissioner Medill gave an unfavorable answer, and informed Mr. Sibley that various propositions for the sale or partition of this reserve had been submitted to the department, "and that it was determined, in every instance, that the matter should first, in some way, receive the sanction of Congress." The power of attorney, which was considered as defective, was returned with this answer on the 16th of February, 1849.

The eighth article of the treaty of the 5th of August, 1851, between Commissioners Lee and Ramsay and the Dakota Indians, is in the following words:

"ARTICLE 8. The half-breeds of the Sioux nation having failed and refused to avail themselves of the provisions for their benefit in the ninth and tenth articles of the treaty concluded at Prairie du Chien on the 15th of July, 1830, it is hereby agreed, at their request, that in lieu of the tract of land set apart for the occupancy of said half-breeds, there shall be paid to them by the United States, under the direction of the President, the sum of one hundred and fifty thousand dollars, (\$150,000:) *Provided*, That the non-ratification of this article shall in no manner affect the other provisions of the treaty."

This article was, however, stricken out by the Senate, in executive session, on the 22d of June, 1852, which, as before stated, leaves the matter just as it stood in 1836, when a proposition for a division or purchase of the tract was first made.

Recently there has been received from Governor Gorman, of Minnesota, a petition from ten of the half-breeds residing upon the Lake Pepin reserve, dated at Wabashaw, in Wabashaw county, in said Territory, in June last, praying that the President may cause to be conveyed to each of the petitioners, in fee simple, under the superintendence of Governor Gorman, a section of land, in pursuance of the power vested in him by the 10th article of the treaty of 1830.

The petitioners say they have resided twelve years and upwards upon their respective tracts; that emigrants are daily making claims and settling permanently upon the reserve—"a circumstance," they say, "pregnant with much evil, and calculated to embarrass its final adjustment," &c.; and they ask that their respective buildings and improvements may be included in and form a part of their reserves of 640 acres each. The petition is favorably endorsed by Governor Gorman, under date of the 15th of July last, in the following words:

"From the intelligent character of these petitioners, and from the fact that our Territorial law has given them the right of citizenship, voting, &c., I especially recommend that their prayer be granted."

A petition of the Madawakanton half-breed Sioux, dated at Wabashaw the 14th of October last, and addressed to Governor Gorman, (lately left in this office,) represents that irresponsible individuals *among themselves* have made sales of their right of common occupancy *to citizens of the United States*, the result of which, they say, "will lead,

among the present occupants, to endless litigation;" that the present white settlers on their tract "have made permanent establishments, and bid defiance to your petitioners, and have absorbed some of the most important points;" that they are destroying their best timber, and even laying out a portion of their lands "into town plats, and offering lots for sale, to the prejudice and against the interest of petitioners, and contrary to law." They therefore pray for the removal of every person trespassing upon their lands contrary to the intercourse law.

This petition having been referred by Governor Gorman to D. H. Dutin, esq., the United States district attorney for the Territory, for his opinion as to the powers of the governor to remove intruders, that officer, in a written opinion dated the 8th of December last, (which accompanies the petition,) quotes numerous authorities to show that the land in the reservation "can only be taken possession of and held by a patent from the government of the United States, or a continued permission from the Sioux half-breeds to occupy the same," and that the United States had the undoubted right, under the act of June 30, 1834, "to employ the military force of the country to drive off all persons found upon the territory in question contrary to law," &c., &c.

The fact has also been brought to my notice, that a petition, very numerously signed by the half-breed claimants, was drawn up at Red Wood agency, in November last, and addressed to Governor Gorman, urging application to Congress, on their behalf, for the passage of a law authorizing the issue of land scrip in their favor for 640 acres of land each, in satisfaction of their claims to fee simple grants, under the treaty, to portions of the Lake Pepin reserve. The petition has been recently filed.

A more recent petition of some of the half-breeds, which you referred here, on the 21st ultimo, with directions for a report of the facts, asks the President (to whom it is addressed) to appoint a commission to ascertain the persons and the number that may be entitled, to enable him "to determine the quantity of land that can be granted to each." While of the opinion that if the maximum quantity of 640 acres be granted to each, it will not absorb all the reserve, the petitioners say they are willing that the President "should patent upon the conditions that they (the claimants) *should relinquish all right and title to the surplus.*"

The Sioux bands who were parties to the treaty of Prairie du Chien of July 15, 1830, have, by the treaties of July 23 and August 6, 1851, relinquished all their claim to the country in which the half-breed tract is situate; and in the adjustment of the question there is, in my opinion, no interest to be considered but that which the half-breeds obtained by virtue of the ninth article of the treaty of July 15, 1830—that is, a right to "occupy the said tract of country, they holding by the same title and in the same manner that other Indian titles are held. But the President of the United States may hereafter assign to any of the said half-breeds, to be held by him or them in fee simple, any portion of said tract not exceeding a section of 640 acres to each individual."

I am informed that many of the half-breeds are very competent to manage their own affairs, and that they have good improvements on the reserve. *It is said that others are altogether incompetent to take*

care of property. Some of the thrifty half-breeds, it is said, have gone off of the reserve, and bought land and made improvements; being unwilling to do so on the reserve, because they could not have land assigned to them in severalty.

No good can result to the half-breeds by the continuance of this occupancy in common. Some legislation will, in my opinion, be necessary before a change can well be made, if for no other purpose than to protect the interests of such portion of these people as are incompetent to manage their own affairs.

The laws of the Territory do not operate over the reserve, and the intercourse act is of but little protection to the residents, who are no doubt subject to all the temptations and adverse influences incident to their peculiar location.

In addition to this, the border white settlers in Minnesota must experience great inconvenience from the state of things now existing on Lake Pepin reserve.

I can find nothing in this office from which I am enabled to come to any satisfactory opinion as to the number of half-breeds who would be entitled to land, if the President were to determine to assign it in fee simple.

In 1839, it was the opinion of Messrs. Stambaugh and Bailly that there were about one hundred and fifty persons born in 1830 who would be entitled to the grant in fee, and that the reserve would satisfy their demands for 640 acres, and leave a surplus of 330 sections.

The delegate from the Territory has recently informed me that, in his opinion, the land embraced in the reserve will not be sufficient to allot for each half-breed 640 acres. It is, however, understood that he claims that all the descendants of the half-breeds of 1830 are proper subjects to participate in the benefits of this land, under the Executive discretion, as they are to enjoy the right of occupancy while it is held in common.

Whether the Executive discretion be exercised, and the land set apart in severalty, or the proposal to issue scrip in lieu of the land be adopted, some legislative provision to guard the interests of the incompetent will be necessary.

I avail myself of this occasion to say that the lands assigned, by the 10th section of the same treaty, to the half-breed Ottoes and others between the two Nemaha rivers, in the Indian country, in view of the expected changes in that country, should, before the same embarrassment and difficulties that surround the Lake Pepin reserve, be adjusted with reference to the settlement and occupancy of the Indian country before that event occurs.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,  
*Commissioner.*

Hon. R. McCLELLAND,  
*Secretary of the Interior.*

GENERAL LAND OFFICE,  
February 23, 1854.

SIR: I have the honor to acknowledge the receipt of your communication of the 20th instant, and, in relation thereto, beg leave to state: that on the first view of the case, I was inclined to consider the Sioux half-breeds as a band of that nation whose lands could only be acquired by treaty. Having understood, however, from Hon. Mr. Rice and others, perfectly familiar with the facts, that such is not the case, but that they are American citizens, and for that reason the Senate properly refused to treat with them, the only mode of removing this reservation is to extinguish their claims under the treaty of 1830, by purchase with money, or in the mode contemplated by the bill which you enclosed. The latter, in my opinion, is preferable, for every reason. No proposition, however, is made for the expenses attending the taking of the census of the persons contemplated by this bill, for preparing or issuing the scrip, or for necessary surveys. These expenses will not be heavy or important; but it would seem expedient to attach another section, providing that they shall be paid out of any money in the treasury not otherwise appropriated.

The regular surveys have been extended almost up to this reservation, and it would be expedient that they should be continued so as to include it. The outer boundaries of the reserve could be run to ascertain its area, and the amount, not exceeding 640 acres in any case, to which each would be entitled under the treaty. There would be no necessity, however, for making fractions on each side of the boundaries of this reserve, as the scrip proposed by the act could be located by legal subdivisions.

By this means the harmony and uniformity of the surveys would not be marred, and the expense would be less than if the reserve were specially surveyed.

The following is respectfully suggested as the draught of the additional section:

"SECTION 2. *And be it further enacted*, That all necessary expenses of taking the census of said half-breeds, issuing the scrip, and making surveys, not exceeding the usual rate per mile allowed by law for such surveys in that region, shall be paid out of any money in the treasury not otherwise appropriated."

The papers accompanying your letter are herewith returned.

I am, very respectfully, your obedient servant,

JOHN WILSON,  
*Commissioner.*

Hon. D. B. WRIGHT,  
*of the Committee on Indian Affairs, House of Reps.*



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BRIG GENERAL ARMSTRONG.

[To accompany bill H. R. No. 347.]

MAY 29, 1854.

Mr. JOHN PERKINS, jr., from the Committee on Foreign Affairs, made the following

REPORT.

*The Committee on Foreign Affairs, to whom was referred the memorial of Sam. C. Reid, jr., in behalf of the claimants in the case of the brig General Armstrong, respectfully report:*

That, after having carefully examined the historical facts, and the diplomatic correspondence between the United States and Portugal, referred to in the memorial, they fully concur in the conclusions arrived at by the report of the Committee on Foreign Relations of the Senate, made unanimously on the 10th March last, and adopt it as a part of this report.

The only question involved is, how far the acts of this government impose on it the obligation, under the facts and circumstances of the case, to redress the claimants; and whether its failure to recover this claim from Portugal does not fix on it liability to indemnify them.

The general principles in the law of nations regulating the duties and obligations of a government towards its citizens, attach responsibility, in this case, to the United States.

The government of Portugal, immediately after the outrage was committed by the English fleet on the American brig, admitted her liability to the United States to indemnify the claimants, and called on Great Britain for an apology and indemnification, which was unhesitatingly accorded. Every administration of this government, from Mr. Madison's down to the present day, has admitted and asserted the rights of the claimants. After making a peremptory demand on Portugal, assisted by the presence of an American fleet in the river Tagus, the President instructed our chargé at Lisbon, Mr. James B. Clay, to refuse a proposition to arbitrate, and to say, "that no such course would, under the circumstances, receive his sanction; and this for reasons too obvious to need enumeration." Portugal refused to comply with this demand, and Mr. Clay asked for his passports, and left the country. Afterwards the Portuguese minister at Washington opened a correspondence on the subject, and continued to urge a reference of it to arbitration. Mr. John M. Clayton, Secretary of State, again resisted the proposition, and in his letter of reply of April 30, 1850, said: "*The undersigned, in conclusion, is compelled to add, that, should the Portuguese government persevere in the refusal to adjust and settle what are*

*believed to be the incontrovertible claims of American citizens upon that government, the only alternative left to the President will be immediately resorted to—the submission of the whole subject to the decision of the Congress of the United States, whose final determination as to the mode of adjustment will have all its appropriate influence upon the course of the Executive.”*

This determination of the President of the United States to sustain the claimants and the national honor, had been already declared by our minister at Portugal, with the strong expression that this government would “*never compromise the dignity of the republic, nor abandon the just rights of his fellow-citizens, to attain any end.*” This decision was considered final, and the case prepared for submission to the Congress of the United States. At this juncture, General Taylor died. The succeeding administration reversed the decision of General Taylor, assumed the responsibility, and accepted (without the knowledge or consent of the claimants) the proposition to arbitrate, under the *bonum* of a promise to pay all other reclamations made by this government against Portugal.

The President of the republic of France (Louis Napoleon) was chosen arbitrator. The claimants were refused permission to submit any arguments upon the facts of the case; and after the lapse of more than a year, an award was made by the Emperor of France (Louis Napoleon) in favor of Portugal, in direct conflict with the law and the evidence.

The committee are of opinion that, under the circumstances, the claimants had a right to consider the repeated recognition by the different administrations of this government of the justice of their claim and the determined action upon it by General Taylor, as carrying with it the force of a judgment in their favor, which a succeeding administration had no power to review and unsettle.

In the cases of Pottinger and Spense, (reported in the Opinions of the Attorneys General of the United States, vol. 1, p. 486,) the question arose, under John Quincy Adams's administration, how far the then Executive was “authorized to review and unsettle the acts of its predecessor.” Mr. William Wirt, Attorney General of the United States (October, 1825,) held that, “If it has such authority, the Executive which is to follow us must have the like authority to review and unsettle our decisions, and to set up against those of our predecessors; and upon this principle, no question can be considered as finally settled.” “Hence I have understood it to be a rule of action, prescribed to itself by each administration, to consider the acts of its predecessor conclusive, as far as the Executive is concerned. It is but a decent degree of respect for each administration to entertain of its predecessor, to suppose it as well qualified as itself to execute the laws according to the intention of their makers, and not to set an example of review and reversal, which, in its turn, may be brought to bear upon itself and thus keep the acts of the Executive perpetually unsettled and afloat. In conversing with President Adams on this subject, I understood him to concur in the general rule of considering all acts of the preceding administration as final; and although partial injuries may now and then remain unredressed by the operation of this, in common with all other general rules, yet it is better to bear that partial evil, or

leave it to legislative redress, than to introduce the more extensive and incalculable evils which must result from considering all the past acts of the past Executives as open to reconsideration and readjudication, at the pleasure of the individuals who were interested in them. And if a decision made in regard to these gentlemen eight years ago, during the Presidency of Mr. Monroe, is open to review and reversal, I do not see upon what principle of discrimination we can refuse to review and reverse a decision made during the Presidency of Mr. Washington," &c., &c.

Congress, under the constitution of the United States, alone has power, in a large number of cases, to redress a gross and manifest injury done to a citizen. In England, in similar cases, the subject is permitted to institute suit against his government, before the ordinary tribunals of justice. In a late case of the kind, (*De Bode vs. Regina*), where a British subject claimed to be entitled to compensation for certain losses suffered by him through confiscation of his property in the first French revolution, which had been the subject of a convention between England and France, (reported in 16th Eng. Com. Law and Equity Reports, p. 23,) the Lord High Chancellor used the following language: "It is admitted law, that if the subject of a country is spoliated by a foreign government, he is entitled to obtain redress from the foreign government through the means of his own government; but if, from weakness, timidity, or any other cause, on the part of his own government, no redress is obtained from the foreigner, then he has a claim against his own country."

The only ground on which the validity of this claim can be questioned is entirely technical in its character, and not to be enforced against the evident demands of justice. It is not a point of law that is to be decided, but a principle of national honor that is to be vindicated.

The gallant sailors who were attacked in the neutral port of Fayal, doubted not that they would be protected in their just rights by the full power of their government; and having had repeatedly, since, the approval of their conduct by the authorities of their country, your committee are of opinion that a stronger case for redress in equity could scarcely be made out, and therefore report the accompanying bill, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES—March 10, 1854.

Mr. SLIDELL made the following report:

*The Committee on Foreign Relations, to whom was referred the memorial of Sam. C. Reid, jr., in behalf of the claimants in the case of the brig General Armstrong, praying indemnity, respectfully submit the following report:*

As appears by the official documents accompanying the memorial, the facts of this case are as follows: On the 26th and 27th of Septem-

ber, 1814, the American private armed brig General Armstrong, commanded by Captain Samuel C. Reid, while at anchor in the neutral port of Fayal, belonging to the dominions of Portugal, was attacked by the gun-boats of a large British squadron, commanded by Captain Lloyd, in violation of the laws of neutrality. The squadron consisted of his Britannic Majesty's vessels, the ship-of-the-line *Plantagenet*, of 74 guns, the frigate *Rota*, of 44 guns, and the brig *Carnation*, of 18 guns. The General Armstrong carried but seven guns and ninety men. After a defence unparalleled in the history of naval warfare, the Americans sustained a loss of but two killed and seven wounded, while the loss in killed and wounded on the part of the enemy was between two and three hundred. The squadron was detained ten days at Fayal in repairing damages. They were occupied three days in burying their dead. The sloops-of-war, the *Thais* and *Calypso*, which arrived a few days afterwards, were taken into requisition to carry home the wounded men. The latter sailed for England on the 2d, and the former on the 4th of October, 1814.

On the representations afterwards made of the facts of this case by the Portuguese governor of Fayal to his government, expressly charging the violation of the neutrality of this port and the destruction of the American brig by the British commander, the prince regent of Portugal, on the 22d December, 1814, instructed his minister at London to demand an apology and indemnification from the English government for the outrage committed. The Marquis de Aguiar, the minister of foreign affairs of Portugal, in compliance with orders received from the prince regent, addressed a note to Mr. Sumpter, the American minister at Rio de Janeiro, dated December 23, 1814, informing him of the circumstances, and stated that "not a moment's delay ensued in causing to be addressed to the British minister at this court the note which is confidentially communicated by a copy to your lordship, at the same time that he has directed his minister in London to make the reclamation so serious an offence requires." The letter alluded to, addressed to Lord Strangford, minister plenipotentiary of Great Britain is dated Palace of Rio Janeiro, December 22, 1814, and holds this language: "His royal highness, at the same time that he has directed his minister at the court of London to make the strongest representations before the prince regent of the united kingdom of Great Britain, and require satisfaction and indemnification, not only for his subjects, but for the American privateer, whose security was guaranteed by the safeguard of a neutral port, orders it to be signified to his excellency, Lord Strangford, that he may inform his government of the unfavorable impression which the conduct of that British commander has caused in the mind of his royal highness," &c.

On the 3d January, 1815, Mr. Madison, President of the United States, not being aware that Portugal had voluntarily admitted her liability to this government, caused Mr. Monroe, the Secretary of State to make a formal demand on Portugal for the destruction of the brig General Armstrong, based upon the sworn protest of Captain Reid and nine of his officers, made before John B. Dabney, United States consul at Fayal. Mr. Monroe, in his letter of instructions to Mr. Sumpter our minister at Rio de Janeiro, held this language: "The growing fre

quency of similar outrages on the part of Great Britain, renders it more than ever necessary for the government of the United States to exact from nations in amity with them a rigid fulfilment of all the obligations which a neutral character imposes." "You are requested to bring all the circumstances of the transaction distinctly to the view of the Portuguese government, and to state the claim which the injured party has to immediate indemnification."

No satisfaction or reply having been received from Portugal to this communication, the claimants, in January, 1817, brought their claim before Congress. The Naval Committee of the Senate, to whom it was referred, in denying the right of the claimants at that time to be indemnified by their own government for the loss sustained, expressly charged the breach of neutrality on the government of England, asserted the responsibility of Portugal to the claimants, and declared it to be the duty of this government to seek redress for the claimants, "by such means as it may deem expedient."

In 1818, on the 14th March, Mr. John Q. Adams, Secretary of State under Mr. Monroe, in a letter to the Portuguese minister at Washington, the Chevalier Corrêa de Serra, calling his particular attention to this claim, said: "Of the facts in this case there is and can be no question, having been ascertained not only by the statements of the injured parties, but by the official reports of your own commanding officer. It is hoped your government will, without further delay, grant to the sufferers by that transaction the full indemnity to which they are by the laws of nations entitled." It is here proper to state, that on the demand made by Portugal for indemnification and satisfaction, England promptly replied by an apology, and made reparation for the loss of Portuguese property occasioned by the firing of the British vessels, but refused to pay the claim preferred and demanded for the destruction of the brig General Armstrong.

From Mr. Monroe's administration up to the early part of the second term of General Jackson, a period of sixteen years, it appears that this claim became neglected and wholly overlooked by both governments. In the mean time the House of Braganza had removed from Rio de Janeiro to Lisbon. On 2d June, 1834, Mr. Louis McLane, Secretary of State, informed Captain Reid that "the situation of Portugal is such as to render the present an unsuitable time for presenting any claim, however just, upon the government. When the political affairs of that country become settled, your memorial will receive proper attention."

Mr. Dickins, of the Department of State, in his letter of instructions to Mr. Cavanagh, dated May 20th, 1835, said: "The Portuguese authorities at that place having failed to afford to this vessel the protection to which she was entitled in a friendly port, which she had entered as an asylum, the government is unquestionably bound, by the law of nations, to make good to the sufferers all the damages sustained in consequence of the neglect of so obvious and acknowledged a duty."

On the 14th of April, 1840, Mr. John Forsyth, Secretary of State under Mr. Van Buren, in reply to the claimants, said that "Mr. Cavanagh's instructions (United States chargé at Lisbon) require him to urge

the call upon Portugal whenever there is room for expecting a favorable result."

Under Mr. Tyler's administration, Mr. Webster, at the solicitation of the claimants, renewed this demand, and a reply in writing was received from the Portuguese minister, Señor de Castro. In this communication, dated August 3, 1843, addressed to Mr. G. W. Barrow chargé d'affaires of the United States at Lisbon, the liability of Portugal was for the first time denied, and it was boldly asserted that the Americans, and not the British, had first violated the neutrality of the port. This was the only written reply ever received from the government of Portugal, since the communication of the Marquis de Aguai a period of nearly thirty years.

Under the administration of General Taylor, negotiations with Portugal were renewed. Mr. John M. Clayton, Secretary of State, in his instructions, dated April 20, 1849, to Mr. G. W. Hopkins, chargé d'affaires of the United States at Lisbon, in speaking of the Armstrong claim as "the oldest case of wrong, and the most remarkable," and in alluding to the wrongs and grievances so long borne by our countrymen, says: "It is under these circumstances that the President has resolved to make one more attempt to procure satisfaction for American claimants, and to assert the national honor. You will impress upon Portugal this idea, that, on entering upon the duties of his high office as Chief Magistrate of the United States, the President determines that he would assert the rights of his fellow-citizens upon foreign governments, proceeding upon the principle, often avowed by our government, 'to make no demand not founded in justice, and to submit to no wrong.' Further delay will be construed into denial. It is in contemplation to lay before Congress the result of this final appeal at an early period of the next session. Should it happen, unfortunately, that a satisfactory answer be denied, or withheld, until the arrival of the period for making the proposed communication, the subject will then be submitted to that body as it shall at the time stand; and the Portuguese government may rest assured that any measures which Congress in their wisdom may decide upon, as due to our citizens and country will be faithfully carried out by the Executive." In carrying out these instructions, Mr. Hopkins, in his letter dated Lisbon, June 25, 1849, to Count Tojal, the Portuguese minister of foreign affairs, says: "The President of the United States sincerely desires to cultivate peace with every nation and people, but he will never compromise the dignity of the republic, nor abandon the just rights of his fellow-citizens, to attain any end."

Mr. James B. Clay, who succeeded Mr. Hopkins, continued the negotiation, and in his letter of the 24th April, 1850, peremptorily refused to accept the proposition of Count Tojal to refer the case of the General Armstrong to the arbitration of a third power. In the final instructions sent to Mr. Clay by the Department of State, dated March 8, 1850, a peremptory demand was made on the Portuguese government, and twenty days allowed for a final reply. These instructions were sent to the commander of the American squadron in the Mediterranean to be delivered to Mr. Clay, and the demand was backed by the presence of the American fleet in the river Tagus. In these instructions

Mr. Clayton says: "In regard to a reference of our claims to an arbitrator, which has been indicated, the President has directed me to say, that no such course will, under the circumstances, receive his sanction, and this for reasons too obvious to need enumeration."

The letter of Count Tojal to Mr. Hopkins, dated Lisbon, September 29, 1849, states that "it is well known that the British government had already, in 1817, disapproved of the conduct of Commodore Lloyd, thereby giving satisfaction to his Majesty's government, and that it had, in March, 1818, made compensation for the losses occasioned to the inhabitants of Fayal by the artillery of the British forces, while absolutely refusing indemnity for the loss of the American privateer, on the grounds of her having been the first aggressor, and therefore the cause of her own destruction." Furthermore, Count Tojal states in his letter of March 9, 1850, to Mr. Clay, that "in 1814 the government of her Britannic Majesty, through Lord Bathurst, then minister of foreign affairs, directed Mr. Canning, ambassador at Lisbon, near the regency, to give the Portuguese government a verbal satisfaction for the occurrences which had taken place, and which resulted in the destruction of the privateer General Armstrong, in the port of Fayal," &c. And finally, that "in 1817, Lord Castlereagh, who was then minister of foreign affairs to her Britannic Majesty, sent the sum of £319 to the inhabitants of the village Da Horta, as a compensation for the damage which the balls of the brig Carnation had caused to their dwellings," &c. On Mr. Clay afterwards quoting these facts as conclusive evidence, both against the Portuguese and British governments, Count Tojal replies in his letter of May 15, 1850, that "the English government does not consider the conduct of Commodore Lloyd as amenable to censure; that upon being informed of its having been asserted, in the course of this correspondence, that Commodore Lloyd had been reprimanded by the government of his Britannic Majesty, on account of his conduct in the affair of the privateer General Armstrong, an official communication was sent, a few days ago, to the government of her most faithful Majesty, stating that the assertion in regard to such censures were entirely destitute of foundation." It is worthy of remark that the Portuguese government studiously concealed the diplomatic correspondence with England in regard to this whole transaction, although requested to exhibit it by Mr. Clay.

The government of Portugal, thus supported, aided, and encouraged by the government of England, continued to resist the payment of this claim, while she willingly admitted others of unequal justice and merit. Under these circumstances, on the 11th July, 1850, Mr. Clay, according to instructions, demanded his passports and left the country. In the mean time, the Portuguese minister at Washington, J. C. de Figueirê e Morão, had opened a correspondence with the Secretary of State in relation to the Armstrong claim, urging a reference of the claim to a third power. Mr. Clayton rejected the proposition, and in his letter of the 30th April, 1850, says: "The undersigned, in conclusion, is compelled to add, that should the Portuguese government persevere in the refusal to adjust and settle what are believed to be the incontrovertible claims of American citizens upon that government, the only alternative left to the President will be immediately resorted to—



the submission of the whole subject to the decision of the Congress of the United States, whose final determination as to the mode of adjustment will have all its appropriate influence upon the course of the Executive." Again, on the 19th June, 1850, Mr. Clayton, in reply to Mr. Figanière's reclamations on this government, as a set off against this and other claims, says: "In conclusion, sir, I beg leave to repeat to you the assurance contained in my note of the 30th May last, 'that the just claims of the citizens of this country upon Portugal will lose none of the merit which characterizes them, nor any portion of that protection which this government has determined to extend to the claimants, by the resuscitation of such unfounded pretensions.'"

At this critical juncture, on the 9th of July, 1850, President Taylor died. On the formation of the new administration under Mr. Fillmore, the proposition of Portugal to submit this claim to a third power for arbitration was renewed, accepted, and agreed to, by this government, without the knowledge, advice, or consent of the memorialist, or any of the claimants. A treaty was concluded on the 26th February, 1851, and ratified by the Senate on the 10th March. This treaty was proclaimed on the 1st September, 1851. Louis Napoleon, President of the republic of France, was chosen as arbitrator. The claimants then submitted to the Department of State and filed a written argument, with the request that it should be transmitted to the arbitrator chosen by the high-contracting parties. The Secretary of State, Mr. Webster, refused the application, on the ground that the terms of the treaty did not permit of it, and the claimants were deprived of the privilege, and debarred of the benefit of being heard, through their counsel and agent, in support of their demand. More than one year was permitted to elapse before any decision was made. The "prince president" had, in the mean time, become Emperor of France. On the 29th November, 1852, Mr. Rives, our minister at Paris, was informed by the French minister of foreign affairs, Mr. Drouyn de L'huys, that the arbitral decision of the prince president had just been rendered, and he would be immediately invited to wait on the prince president to receive the decision. On the 10th December, 1852, the French minister informs Mr. Rives that, "circumstances not having permitted the 'emperor' to invite you to wait on him, he has done me the honor of deputing me to deliver, in his name, to the representatives of the two nations interested in the matter, the two documents destined for their respective governments." Mr. Rives, in his letter to Mr. Everett, Secretary of State, dated Paris, December 13, 1852, discloses the particulars of the formalities of receiving the award, and states, in conclusion, that, "It may not be improper for me to add, that I never received, from any quarter, any intimation of the nature of the decision rendered; nor did the minister of foreign affairs, in the interview above mentioned, make the slightest allusion to its bearing on the one side or the other. He only said, in general terms, that the President had examined the whole subject with great care and attention, and with an earnest desire to render justice to the parties, according to the facts and principles involved in the controversy."

It is evident, from the letter of Mr. Rives, that he never was consulted or advised with in regard to the rights of the claimants, nor was

he invited or permitted, at any time, to appear before the "prince president," or "Emperor of France," to make any statement, or explain any fact or argument in behalf of the claimants in this arbitration.

Having thus narrated the facts of the case, the committee will now proceed briefly to state the views which have led them to the conclusion that the memorialists are entitled to relief. It is certain that, by a gross violation of the law of nations, the General Armstrong was attacked and destroyed, in the neutral harbor of Fayal, by a British squadron; that the outrage was, immediately after its occurrence, and when the facts were all fresh in the recollection of the authorities and inhabitants of Fayal who had witnessed it, made the ground of earnest and indignant remonstrance by the government of Portugal to that of Great Britain; that it was admitted and apologised for by the latter, and compensation made to such Portuguese subjects as had suffered by the collision. It appears to be conceded on all hands that the tolerance by a neutral of such a violation of its territory, renders it responsible to the government whose citizens have suffered by it, not only for apology and explanation, but for pecuniary indemnity; that such claim was made by the United States and urged for many years on Portugal; that its justice has been considered indisputable by all administrations; that even it was on one occasion intimated that it would, if denied, be enforced by arms; that, after many delays and evasions, Portugal offered to refer the claim to the arbitrament of a third power; that this offer was peremptorily rejected; that afterwards being renewed, accompanied by the bonus of a promise to pay the full amount of all other reclamations made by the United States, it was accepted, without notice to, or consultation of any kind with, the claimants, who, when it had once been rejected, had a right to presume that it would not be acceded to without their assent; and that they were not allowed the privilege of submitting an argument in the case. While a government is the sole judge of the circumstances under which a resort to arms should be had to secure reparation for injuries done to their citizens, and may abstain from a further prosecution of them, yet a manifest distinction exists between this right of abstinence and that of referring to arbitration. This power may be discreetly and rightfully exercised where various and complicated causes of complaint exist, and where the adjustment of none can be obtained without the submission of all to reference; and the citizen as to whom the decision may be unfavorable, although his claim be just, would probably have no valid equitable ground of recourse against his government.

The case of the General Armstrong was distinct and isolated; no other interests were hanging upon its decision; and if the administration of President Fillmore did not choose to urge it further, it might, and, in the opinion of this committee, should have been left for future settlement. Numerous instances in our own history during the last thirty years, to which it is not necessary to refer, demonstrate the efficacy of time in bringing about the solution of difficulties apparently insurmountable.

The committee, while indisposed to speak in any other terms than those of unqualified respect of the judgment and impartiality of the

arbiter to whom the case was referred, think that there is a manifest error in his statement of facts, and the conclusion drawn from his statement in the final award. He says: "Considering that, if it be clear, that on the night of the 27th of September, some English long-boats, commanded by Lieutenant Robert Fausset, of the British navy, approached the American brig the 'General Armstrong,' it is not certain that the men who manned the boats aforesaid were provided with arms and ammunition. That it is evident in fact, from the documents which have been exhibited, that the aforesaid long-boats having approached the American brig, the crew of the latter, after having hailed them and summoned them to be off, immediately fired upon them, and that some men were killed on board of the English boats and others wounded—some of whom mortally—without any attempt having been made on the part of the other boats to repel at once force by force."

Now, it is evident that the natural, indeed necessary, presumption is, that the boats of men-of-war do not, at night, closely approach an armed vessel of an enemy, without the crew being armed; those who assume the negative in such a case should prove it. But no stronger evidence can be required of the fact of the crews of the British boats being armed, than that a seaman of the General Armstrong was killed, and her first lieutenant wounded, in the first contest. Under all the peculiar circumstances of the case, the committee are of opinion that the claimants are justly entitled to relief on strict legal principles; and even were their convictions on the subject less decided than they are, they would find in the heroic conduct of Captain Reid and his gallant crew strong inducements to give them the benefit of their doubts.

There are two points of general interest involved in this matter, which should not be without their influence on the action of the Senate. The effect to be produced on our own citizens by according indemnity in stimulating them to emulate the noble example of Captain Reid; for there can be no doubt that if he had suffered himself to be captured without resistance, full pecuniary satisfaction would long since have been accorded by Portugal to the claimants. Shall we refuse it because he has added to our naval history one of its most brilliant pages? Again, if we act upon the avowed principle that our citizens are always to be compensated for any injuries they may suffer from the violation by belligerents of the law of nations, other countries will be more earnest in maintaining the inviolability of their territory.

The committee report the accompanying bill, and recommend its passage.

WILLIAM SENNA FACTOR.

[To accompany S. bill No. 136.]

JUNE 10, 1854.

Mr. GREENWOOD, from the Committee on Indian Affairs, made the following

REPORT:

*The Committee on Indian Affairs, to whom was referred Senate bill No. 136, together with the claim and memorial of William Senna Factor, asking compensation for losses sustained in the Seminole war in Florida, having had the same under consideration, make the following report:*

The committee fully concur in the report of the Senate committee upon the same subject, except as to the amount they believed the memorialist was entitled to. The evidence shows that Rose Senna Factor, the mother of the memorialist, lost all her property by destruction under orders of United States officers, and for this it cannot be denied that the United States is liable. The residue of the property for which compensation is asked, the committee are of opinion was destroyed by the Seminoles in a state of war, and does not constitute a valid claim against the government.

They are also of opinion that the value fixed upon the property destroyed by order of United States officers is exorbitant, and that the memorialist is only entitled to the sum of two thousand dollars, believing that amount to be a fair compensation for the property destroyed, and for which the United States is liable; and therefore report the Senate bill back to the House with an amendment.



OWNERS OF BRIG KATE BOYD.

[To accompany S. Res. No. 3.]

JUNE 13, 1854.

MR. A. HARLAN, from the Committee on Commerce, made the following

REPORT.

*The Committee on Commerce, to whom were referred Senate resolution No. 3, for the relief of the owners of the brig "Kate Boyd," and accompanying papers, report:*

That the "Kate Boyd" in the spring of 1850, and about the 29th of May, was seized and detained in the port of New York, under an order from the President of the United States, on suspicion of being engaged in a violation of the neutrality laws.

The "Kate Boyd" was a Boston vessel, and at the time of her seizure was under charter to A. C. Rossire & Co., merchants of the city of New York, for a voyage to Port Au Prince and back, for the consideration of the sum of \$1,200 and the payment of all foreign port charges, and had taken on board a quantity of guns and gun-carriages and merchandise, and was engaged in taking on board a large quantity of gunpowder; which materials the officers of the government supposed were intended to be used in the warlike movements then in progress in the island of St. Domingo, by being transferred to some vessel or vessels engaged, or to be engaged, in actual hostilities; and it was suspected that this vessel herself was to be armed for hostile action. The evidence, in the opinion of the United States district attorney, did not warrant the prosecution, and the vessel, after being detained for about one month, was discharged, and with her cargo, on the 29th day of June, 1850, proceeded on her voyage. The papers in the case show that she never reached the ports of St. Domingo, but that vessel and cargo were lost in a storm at sea on her outward voyage.

There is no evidence as to the place where she was lost, nor the time when she was lost; but it was probably about the middle of July, if her voyage was made directly for St. Domingo.

The owners of the brig now apply to the government, and ask indemnity for losses and damages sustained in consequence of the seizure of the vessel, and present the following account:

1. Loss on vessel over and above insurance (estimated value of vessel, \$10,018; insurance, \$7,252)..... \$2,766 00
2. Demurrage as fixed by charter party..... 750 00

3. Amount of charter party for the voyage.....	\$1,200 0
4. Estimated value of provisions and vegetables decayed	35 0
5. Expenses of H. C. Gregerson (owner) from Boston to New York on occasion of seizure, and board in New York.....	50 0
6. Interest on vessel, costing say \$10,000, three months old, one month, seven per cent.....	57 5
7. Insurance on vessel while under seizure, \$10,000, estimated at one per cent.....	100 0
8. Depreciation and wear and tear of vessel one month, say one per cent. on \$10,000.....	100 0
9. James O. Ward's bill of stores.....	163 6
Do. do. chandlery.....	47 2
10. Jackson Ferry Company's bill of wharfage.....	30 0
11. Dill & Seaver's bill of advance wages and shipping crew.....	155 7
12. J. B. Tardy's bill of commissions for procuring charter of A. C. Rossire & Co.....	30 0
13. Captain's wages one month.....	75 0
14. Board.....	30 0
15. One man's wages and board additional to crew one month.....	35 0
16. Loosing and furling sails sundry times.....	15 0
17. Bill of paint and painting.....	56 0
Total amount of damages claimed.....	<u>5,696 8</u>

The owners of this vessel by her charter party agreed to be detained in the ports of St. Domingo for thirty running days, and if she had been suffered to depart from the port of New York without delay, and had been detained in the ports of St. Domingo as long as she agreed to be, and no longer, she would have been on her return voyage during that same season of the year which is described by the claimants as "the hurricane season."

Is it true that the month of July is an unfavorable season for a voyage from New York to St. Domingo? If it were true, why was the voyage undertaken? The government did not require it to be undertaken, and it was at the option of the owners either to enter upon the voyage or not. If the season was unfavorable, the owners should at least have taken the precaution of insuring the vessel to the amount of its full value.

It appears by the charter party entered into for this voyage, that it was agreed not only that the vessel might be detained in the ports of St. Domingo for thirty days, but that for any delay over that period the owners should receive, as full compensation, the sum of \$25; and that only for each day's delay. If this was a fair compensation for delay in a foreign port, no reason is perceived why it would not be compensation for delay and detention in a home port.

The question here arises as to what items of expenses and damages are fairly contemplated and covered by this *demurrage* for delay in foreign port.

The vessel while detained in St. Domingo must have had on board her captain and her crew. Their wages and board were to be paid. The interest on the cost of the vessel must be paid, and the expense of insurance had to be paid. The wear and decay of the vessel was going on. The necessity for furling sails, and for paint and painting, was no greater in New York than in St. Domingo. Stores for the vessel were as necessary in a foreign port as at home. The item for attorney's fees in procuring charter party surely cannot be set down as damages caused by the seizure of this vessel.

If this be a correct view of the subject, then demurrage, if allowed, would cover the items numbered 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, and 17. If demurrage does not cover these items, it will be difficult to find any good reason why it was agreed for or allowed.

The first item in the account is for the value of the vessel over and above the amount for which she was insured, \$2,766. There is a want of evidence to show the fact that the vessel was worth anything above the amount for which she was insured.

There is want of evidence to show the time and place of her loss. She may have been pursuing her direct voyage to St. Domingo, or she may have departed from it.

It is sufficient to say, that if it is admitted that the vessel, after being released, prosecuted her voyage with ordinary diligence, it does not appear that her loss at sea was either the inevitable, natural, immediate, proximate, or necessary consequence of her seizure and detention in the port of New York.

The claim of damages for the loss of the vessel in this case is believed to be too remote from the acts of the government to be recognised as just or proper by any rule of either law or equity. And the claim of damages stated in the third item for loss of freight, is equally remote and foreign from the seizure, and should for the same reason be rejected.

The owners of the *Kate Boyd* appear to have an equitable claim for the following items:

2. Demurrage as fixed by charter party.....	\$750 00
4. Estimated value of provisions and vegetables decayed (as her delay was uncertain as to time).....	35 00
5. Expenses of H. C. Gregerson (owner) from Boston to New York on occasion of seizure, and board in New York....	50 00
10. Jackson Ferry Company's bill of wharfage.....	30 00
Attorney's fees and advice notarial, and other expenses in ob- taining release of vessel.....	50 00
<b>Total amount.....</b>	<b><u>915 00</u></b>

To this extent the claim should be allowed, and no sufficient reason is perceived for a reference of the claim to the Secretary of State and Attorney General, as proposed in the resolution of the Senate (No. 3) referred to this committee; and we recommend that all of said resolution after the enacting clause be stricken out, and the following words be inserted: "That the sum of nine hundred and fifteen dollars, out of any money in the treasury not otherwise appropriated, be paid to the



owners of the brig Kate Boyd, for her illegal seizure and detention in the port of New York, in the year 1850, by the order of the President of the United States, and this sum to be in full satisfaction for any further claim of damages," and that the resolution, so amended, do pass.

JOHN D. COLMESNIL.

[To accompany joint resolution H. R. No. 24.]

JUNE 10, 1854.

Mr. UPHAM, from the Committee on the Post Office and Post Roads,  
made the following

## REPORT.

*The Committee on the Post Office and Post Roads, to whom was referred the memorial of John D. Colmesnil, President of the Ohio and Mississippi mail line, respectfully report:*

That, in the year 1832, propositions passed between the petitioner and the then Postmaster General, Major Barry, for the transportation of the mail, by the steamboats of the Ohio and Mississippi Mail Line Company, (of which company the petitioner was president.) between Louisville and New Orleans, stopping at certain intermediate points to deliver and receive mails. As the Postmaster General and the petitioner were neighbors and intimate friends, the communications between them seem to have been informal, and, for the most part, merely verbal. The result was, that they came to such an understanding that the operation took effect, and the steamers of the company entered upon the service of carrying the mails.

No written contract was made. It was agreed that the compensation should be left to the determination of the Postmaster General. The petitioner declares, and the declaration is corroborated by other evidence, and has ever been received with entire credit and faith, that it was supposed between the two parties, at the time the arrangement was agreed upon, that the compensation would probably amount to about sixty or seventy thousand dollars.

The service, it is proved, commenced in the boat that reached New Orleans from Louisville on the 15th of December, 1832, and continued to the termination of the boating season, at least five months.

From the great want of method characterizing the affairs of the Post Office Department at that time, (for which the petitioner cannot be held responsible,) from the intimacy and neighborly familiarity of the parties, and from the just confidence they placed in each other's honor and integrity, there appear to have been scarcely any official communications between them. Notice was first formally given by the Post Office Department in Washington to the New Orleans postmaster, of the arrangement, by a despatch, dated December 31, 1832, which could not have reached the latter place until nearly a month after the service had begun at Louisville. At the same date a despatch, signed O. B.

Brown, was forwarded to the petitioner, announcing, officially, the arrangement, expressing the Postmaster General's conviction of its importance, and concluding in these words—"the compensation, as proposed by yourself, will be fixed by the Postmaster General."

It very soon seems to have occurred to the department that it would not answer to have so important an arrangement stand on so loose foundation as a verbal estimate suggested in private conversation, and the undefined discretion of the Postmaster General, particularly as there was a provision of law to determine the amount of compensation in such cases. A despatch, dated January 14, 1833, was accordingly sent to the petitioner, "to take no action under the authority of the letter of December 31, 1832." The very next day, January 15, 1833, an official communication was addressed to "Robert T. Lytle, esq., agent of the Ohio and Mississippi line of steam-packets," signed "W. T. Barry," informing him that the existing law determined the limit of the compensation to be allowed to the company for carrying the mails, not to "exceed three cents for each letter, nor one-half cent for each newspaper thus conveyed." In this letter the Postmaster General endeavors to relieve the department of any responsibility for the looseness and irregularity that had marked the transaction in its previous stages, and to place it upon a correct and legal footing. He still manifests his interest in the operation in such language as the following: "The strongest disposition exists with the department towards the advancement of a project so important to the interests of the West and South, and so far as the law and a due regard to the finances of the department will admit, it will give me pleasure to give it encouragement."

On this basis the operation proceeded to the close of the season. Seventeen steamboats were employed in the service, stopping and exchanging mails at seventeen different points on the rivers Ohio and Mississippi, keeping vehicles in attendance for that purpose at each post office landing, and discharging the trust, so far as appears, in a satisfactory manner. The committee have had evidence from the highest source, and which can, at any moment, be given on the floor of the House, that the mail-boats performed their trips with extraordinary punctuality. During the season, it is in evidence that, at times, an enormous amount of mail matter passed on this route; not only the ordinary great mails from and to the Eastern, Middle, Western, and Southwestern States, but occasionally the mails from Norfolk, and in one instance, it is said, even the Charleston mail, were forced, by the impassable state of the route to Montgomery, to find their way round by Louisville to New Orleans.

At the conclusion of the service the Post Office Department was found to be in such an embarrassed financial condition, that it was in vain to think of a settlement. It was bankrupt, and continued so for some time. When Mr. Kendall became Postmaster General, in the spring of 1835, he adopted and announced the resolution to apply the current revenues of the department to its current expenditures only, and this as well as all other prior claims, were, for the time, necessarily repudiated. Postmaster General Barry, true to his word and to the merit of the case, always admitted the justice of the claim, and maintained

that the credit of the government was pledged to its payment, whenever the department should be in funds.

When, after the lapse of several years, the department had emerged from its difficulties, the petitioner came on to present his claim; but it was then discovered by him that all the accounts and vouchers, which had been regularly sent on from the various parties and offices on the route, had been destroyed in the conflagration of the Post Office building in this city. All the papers that remain in reference to the transaction are a few, for the most part brief notes and letters, from which extracts have been taken in this report. It is apparent, at once, that no precise settlement or liquidation can be made of this strange, perplexed, and ill-starred case. But the rights of the petitioner and the duty of the government still remain. If not capable of being audited upon strict business principles, by precise records and figures, the claim must be discharged by the exercise of a sound and just discretion, and upon the basis of liberal, but careful, general estimates. This is beyond the ability, perhaps, of such a body as Congress, or its committees—certainly not within the sphere of its appropriate functions. The Committee on the Post Office and Post Roads of the 31st Congress, taking this view of the subject, reported accordingly a joint resolution, which passed on the 27th of February, 1851, in the following terms, to wit:

*"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Auditor of the Treasury for the Post Office Department be, and he is hereby, authorized and directed to audit and adjust the account of John D. Colmesnil, President of the Ohio and Mississippi Mail Line Company, for transporting the mails of the United States on the Ohio and Mississippi rivers, between Louisville and New Orleans, and intermediate points, during the season of steamboat navigation, between the fifteenth day of November, eighteen hundred and thirty-two, and the fifteenth day of July, eighteen hundred and thirty-three; and upon ascertaining the amount of service actually rendered by said company in the transportation of the mails as aforesaid, the said Auditor shall pay to the said John D. Colmesnil, for the use of himself and his associates, out of any funds appropriated for the transportation of the mails, the sum which may be found justly and equitably due to said company—provided that said sum shall not exceed the rate of allowance fixed by the fifth section of the act of March third, eighteen hundred and twenty-five."*

The Auditor, proceeding under the authority of this joint resolution, allowed and paid the sum of \$20,599 49.

The petitioner received the sum thus awarded, *under protest*, and now comes before us with an appeal against the said award, as not fulfilling the intent of Congress, in the passage of the joint resolution, and as unjust to him.

The committee have considered the subject faithfully and carefully, and are of opinion that the petitioner has good grounds for his appeal.

The award of the Auditor, in its closing paragraphs, contains admissions which authorize the party concerned, and incline the committee, to require a re-examination of the case. He says that he has "adopted throughout a measure of calculation at the lowest basis which the evidence warrants." The committee cannot believe that it was the design

of the 31st Congress, in the passage of the joint resolution of the 27th of February, 1851, to screw the rights of the petitioner down to the lowest point to which the evidence could be pressed. Again, the Auditor says that, "if injustice has been done, I am satisfied that, under the circumstances, the company has been allowed rather a less amount than the services rendered were reasonably and fairly worth, according to the prices usually paid for the transportation of the mail." The committee are clearly of opinion that there is ground for the acknowledgment thus frankly made by the Auditor.

To enable him to discharge the duty assigned him by the joint resolution of Congress, the Auditor despatched Wm. B. Thrall, the principal pay clerk of the department, to Louisville and Frankfort, Kentucky, and to Cincinnati, Ohio, for the purpose of taking the testimony of witnesses conversant with the transaction, in order to elicit such facts as might aid in the formation of an enlightened judgment of the amount of service rendered. The witnesses summoned, as Judge Thrall declares in his report, were persons of the highest respectability and credibility, and their testimony had every characteristic of fairness and integrity, and the committee think that it was the duty of the Auditor to respect and receive the evidence thus collected by his own agent, selected for the purpose, and pursuing his investigations with care and diligence under circumstances of great caution and deliberation, and in the presence of the other party, who had been duly notified to attend. But it is plain that, on almost every point, the evidence collected by Judge Thrall was arbitrarily set aside. The Auditor allows for but "three trips before the 16th of January, 1853;" whereas the evidence shows that the transportation of the mails by the company, on the boats, began in the middle of December.

Captain Beckwith deposes that he went to New Orleans as the agent of the company on the steamboat *Louisiana*, and arrived there on the 15th of December, 1852, *taking down the mails*, and he also particularizes the detentions occasioned in the several successive trips, all along the residue of that month, by the performance of the mail service. Mr. James Johnstone, the mail clerk who received and delivered all the mails at Louisville, also testifies to the fact that the mail was first carried in the boat on board of which the New Orleans agent, Captain Beckwith, went down. Evidence so specific, and thus corroborated, ought to have been considered decisive in favor of about the number of trips claimed by the petitioner to have been performed in the mail service.

So also, as respects the quantity of mail matter carried, the Auditor disregarded, we think, to some extent, the evidence collected by his own agent. In the absence of all records and returns from the various offices and points on the route, which, it will be borne in mind, were destroyed by the burning of the Post Office building in Washington, the only possible mode of reaching a judgment was to get such testimony as could be obtained from persons concerned in the transactions, as to the probable weight of the mail bags carried to and from the steamboats, the termini and intermediate stopping-places on the route. The opinions of the various captains, postmasters, and other persons concerned are quite various on this point—ranging from 1,000 to 2,000 pounds

That of Mr. Johnstone, who carried the mail bags on his own drays between the steamboats and the post office at Louisville, is that they averaged 1,500 pounds. This is the mean point, and, we think, ought to have been adopted in preference to all the other numbers given, or any average of them. It is obvious that but little reliance can be placed in the judgments of persons who merely saw the mail bags, and never had occasion to handle them, while the estimate of the party whose business it was to handle and carry them could scarcely fail to be substantially correct.

The ordinary average weight of the mail at the two starting-points of the route being assumed, it then became necessary to fix an estimate of the proportion of letters to newspapers and other matter. The Auditor very properly adopted the opinion, on this point, of Mr. Fetter, who at the time and for many years afterwards was a clerk in the post office at Louisville, and whose experience made him competent to form a correct opinion, and considered *one-eighth* as the probable proportion of letters. Two hundred pounds was deducted for the weight of the bags and locks, and one-eighth of the residue, being letters, was to be allowed for, according to the joint resolution and the act of Congress of March 3, 1825, relating to the subject, at the rate of three cents to the letter. The next point was to ascertain the probable average number of letters to the pound. To determine this, Judge Thrall, accompanied by the other party, went to the Louisville post office, and, taking a quantity of letters, as they found them, at random, upon weighing them, fixed upon 64 to the pound, and, making the same experiment upon newspapers, fixed upon 16 to the pound.

This test, fairly made in the presence of both parties, and the chosen method of his own agent, ought, we think, to have been binding upon the Auditor. It was suggested that some allowance ought to be made for the weight of envelopes, which had come into use subsequent to 1833; but it was agreed that no considerable change had taken place in the weight of letters, as very often a half sheet, or mere slip of paper, is enclosed in the envelope. The Auditor arbitrarily struck off 10 from the number of letters to the pound, and gave as the reason for it several private experiments made, in the absence of the other party, in the Washington post office, by which it appeared that about one-fourth of every pound of letter-matter was made up of wrapping-paper, twine, and sealing-wax! It is to be presumed that "wrapping-paper, twine, and sealing-wax" weighed as much at Louisville as at Washington.

Having thus got rid of one-sixth of the number of letters, he proceeded to strike off one-half of all the remaining weight of the mails, "on account of pamphlets and free documents, not included in the designation of letters and newspapers."

The committee cannot for a moment countenance the idea that the Auditor had any right, while directed by Congress to pay for "the amount of service actually rendered," to disallow for a large part, in fact nearly half (that is, *seven-sixteenths*) of the whole quantity of mail-matter carried. The government will not pretend to have a right to call upon individuals to carry on its laborious and costly services at their own private charges—to transport hundreds and thousands of pounds of mail-matter, from distant points and at great expense, with-

out compensation. It is true that the Auditor was required to keep within the limits of the act of March 3, 1825, which classes all payable matter under the heads of "letters" and "newspapers." But this must be interpreted with a liberality sufficiently comprehensive to include the whole "amount of service actually rendered." In fact, this is the interpretation generally given in postal documents. A printed sheet is regarded as equivalent to a newspaper, and pamphlets and books, and free matter generally, thus come under the head of "newspapers." Usage, on this point, coincides with reason, justice, and common sense.

On the item of way-mails, the Auditor seems to us to have adopted a rather lower basis of calculation than his own evidence fairly warranted.

The joint resolution of Congress made it the duty of the "Auditor of the Treasury for the Post Office Department," and him alone, to determine and pay the amount due to the petitioner. The agency of no other official is recognised or authorized in the transaction. The spirit and letter of the joint resolution seem, in this particular, to have been disregarded. Other public agents interfered. Among the papers accompanying the petition is an elaborate report, drawn up by one of the Assistant Postmasters General, and communicated to the Auditor. As an illustration of the character of this unauthorized award, ciphered out by an official not called to the work by the joint resolution of Congress, it is only necessary to mention that he footed up the amount due the "Ohio and Mississippi Mail Line Company," for carrying the great national mail one entire season between Louisville and New Orleans, at \$7,188 60!

Soon after the opening of the session of Congress immediately subsequent to the passage of the joint resolution of the 3d of March, 1851, the following letter was addressed to the petitioner :

WASHINGTON, *December 16, 1851.*

SIR : As members of the Committee on the Post Office and Post Roads of the House of Representatives of the 31st Congress, which reported the joint resolution which was passed for your relief and that of your associates, the late Ohio and Mississippi Mail Line Company, we have a perfect recollection of the facts before the committee, and of its views in reporting the said resolution and procuring its passage.

1. The committee was well aware that no enumeration had been taken at the time of the number of letters and newspapers which had been conveyed by the boats of the company, and were satisfied that no post office accounts, returns, or registers were in existence, or could be procured, from which such enumeration could be derived.

2. In the absence of such enumeration, the committee were satisfied that the proper, and, indeed, the only mode of arriving at justice between the parties in the case, was to take evidence, under the usual and proper formalities, of the average weight of the mails, of the proportion of letters to newspapers, and of the number of each—letters and newspapers—to the pound.

3. It was the wish and design of the committee, in devolving the adjustment of the account upon the Auditor of the Post Office Department, and vesting him with equitable powers, to exempt the case from

any and all political or cabinet influence; to secure the adjustment upon strict judicial principles; to be considered, expounded, and decided by the Auditor himself, without any control, bias, or influence from any other authority or person whatever.

4. The committee considered that the service had been rendered under competent authority. They considered that that question was settled and concluded by the passage of the resolution, and that all that was left to the Auditor was to ascertain the *extent or amount* of such service, and the value or amount of such service in money.

5. The first-named of the undersigned has himself been in a condition to acquire a practical experience in the nature of the very business in question. He was postmaster at Toledo, in Ohio, during the time the mail was carried on the Mississippi and Ohio rivers by your company. The same description of service was rendered by other boats on Lake Erie, and in connexion with the office at Toledo; and he knows that not only were the *through* mails paid for, but that the free matter was also paid for; that is to say, free documents and speeches, as well as free letters, newspapers, &c.; and such being the practice, the committee fully desired and expected that the same mode of settlement should be applied to your case.

Very respectfully, your obedient servant,

E. D. POTTER,

*Chairman Committee on the Post Office and Post Roads.*

R. H. STANTON.

WM. HEBARD.

PAULUS POWELL.

CHARLES DURKEE.

J. D. COLMESNIL, Esq.

The committee being entirely convinced that the petitioner has a just claim for a re-adjudication of his case, and feeling that it requires a more thorough scrutiny than they can give to its details, advise its reference for final adjustment to the First Comptroller of the Treasury. His experience, ability, and universally acknowledged integrity, will command the entire confidence of the government and of the petitioner. The committee accordingly recommend the passage of the accompanying joint resolution.





**WILLIAM G. HOWISON.**

[To accompany bill H. R. No. 356.]

**JUNE 10, 1854.**



**Mr. HAMILTON**, from the Committee for the District of Columbia, made the following

**REPORT.**

*The Committee for the District of Columbia, to whom was referred the petition of William G. Howison, of the District of Columbia, for relief, report:*

That it appears he was a member of the Auxiliary Guard for the city of Washington, and that whilst acting in that capacity he became sick; that he remained so for 167 days, when, on account of it, he was discharged the service; that whilst sick he was docked in his pay, which he maintains was not right, and not justified by precedent. The committee think that under the circumstances he is entitled to relief, and report a bill accordingly.



CAPTAIN NEHEMIAH STOKELY—HEIRS OF.

[To accompany bill H. R. No. 359.]

JUNE 10, 1854.

Mr. DRUM, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom were referred the petition and documents of Joseph Stokely and Polly Findley, submit the following report:*

That Nehemiah Stokely, in right of whose services in the war of the Revolution the claim is preferred, in 1776 entered the service in the continental establishment as a captain in the 8th regiment of Pennsylvania line, commanded by Colonel Brodhead, and that he served in said regiment till 1779. The period of his service, and his rank in the army, are proved by the depositions of several witnesses who served with him in the same regiment, and by the certificate of Mr. Hagner, Third Auditor of the Treasury; which certificate also shows that Captain Stokely became a deranged or supernumerary officer in April, 1779. It appears further, from the depositions, and from the certificate of the auditor general of Pennsylvania, that Captain Stokely, during the whole of the time from 1779 till the close of the war, was actually engaged in active service, having enlisted and commanded one or more companies for the protection of the northern frontier. It is shown, too, from the records, that a bounty land warrant issued to the assignee of Nehemiah Stokely, who was a supernumerary captain of the 8th regiment of the Pennsylvania continental line. And it further appears, by the certificate of the secretary of the commonwealth of Pennsylvania, that the comptroller general of Pennsylvania returned Captain Nehemiah Stokely entitled to his donation land from the State of Pennsylvania, which is taken to be conclusive evidence of his having served to the end of the war, or becoming supernumerary after October, 1780, as none other than those who served to the close of the war, and those who became supernumerary after October, 1780, were entitled to donation land.

The committee are satisfied, from the facts presented in the case, that Captain Stokely was entitled to the same bounty which the government provided for similar cases, and that he died in 1792 without having received his commutation pay.

The committee are also satisfied, from the evidence, that Joseph Stokely and Polly Findley, the widow of John Findley, are the only surviving heirs of Captain Nehemiah Stokely. The committee, therefore, herewith report a bill for the relief of the heirs of Captain Nehemiah Stokely, deceased.

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CAPTAIN MATTHEW JACK'S HEIRS.

[To accompany bill H. R. No. 360.]

JUNE 10, 1854.

Mr. DRUM, from the Committee on Revolutionary Claims, made the following

R E P O R T.

*The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Matthew Jack, report:*

The petitioners state that the said Matthew Jack entered the service of the United States in 1776, as a lieutenant in the 8th regiment Pennsylvania line; was wounded in 1777, in a battle near Brunswick, New Jersey, and was afterwards appointed a captain. They represent that he became a supernumerary officer in 1779; but was still continued in service, and was discharged at Pittsburg, Pennsylvania, and drew an invalid pension; and after the act of 1832, he was placed upon the pension list as a captain. They therefore ask the one year's extra pay to which he was entitled by virtue of the resolution of November 24, 1778, he having become deranged in 1779, as appears from the certificates of the Third Auditor of the Treasury, remaining on file with the papers in this case.

The committee are satisfied, from the facts presented in the case, that Captain Jack was entitled to the one year's extra pay claimed by the petitioners, he having died without having received the same. They therefore report a bill for their relief.



WIDOW AND CHILDREN OF EZRA CHAPMAN.

[To accompany bill H. R. No. 361.]

JUNE 10, 1864.

Mr. DRUM, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the memorial of Ezra Chapman, of Tolland, in the State of Connecticut, respectfully report:*

That the said committee have examined the evidence in the case, and beg leave to refer to a report made by the same committee on said case on 28th of March, 1850, and to make the same a part of this report. It is as follows:

"The memorialist claims to be the only son and heir-at-law of Ezra Chapman, deceased, who was an ensign in the army of the Revolution, and died in the service on the 1st day of September, 1778, and, as such, entitled to the provisions of the resolution of the Continental Congress, passed August 24, 1780, granting half pay for seven years to the widows and orphans of the officers who had died, or who should thereafter die, in the service.

"The committee find, from the evidence presented by the memorialist, that his father, Ezra Chapman, senior, on the 6th day of August 1777, entered into the service of the army of the Revolution as an ensign, commissioned by Congress, in Captain Horton's company, in Colonel Baldwin's regiment of artificers, and continued in said service in said office as ensign until the 1st day of September, 1778, when he died; that the said Ezra, at his decease, left a widow and one son, the memorialist, then about five years of age; that the widow of said Ezra, soon after his decease, married one Elihu Marvin, and died in the year 1786, without leaving any other child; and that neither the said widow, before her said marriage with the said Marvin, or afterwards, or the memorialist, or any other person for them or either of them, has ever received the seven years' half-pay of the said Ezra, deceased, to which his widow, in case of her marriage, his orphan child, became entitled by virtue of the resolution of Congress, passed the 24th day of August, 1780.

"The committee further find that Congress has uniformly recognised the validity and justice of claims precisely parallel with this; and, as late as the year 1836, directed them to be paid, as the acts of the 24th Congress will show.



"The committee are, therefore, of opinion that the memorialist, the said Ezra Chapman, of Tolland, Connecticut, is entitled to receive the half-pay for seven years of an ensign in the army of the Revolution; and, to effect this object, they report herewith a bill, and recommend its passage."

Your committee further report that, since the presentation of the petition of the aforesaid claimant to Congress, he, the said Ezra Chapman, has died, leaving a widow and seven children; and that his said widow, Abigail Chapman, and Sherman Chapman are the administrators of his estate. Your committee respectfully recommend the payment of the claim, and report a bill for that purpose.

HEIRS OF JOSEPH SAVAGE.

[To accompany bill H. R. No. 362.]

JUNE 10, 1854.

Mr. DRUM, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of the heirs and legal representatives of Joseph Savage, deceased, report:*

That they have given the said case a careful consideration, and find that there is ample evidence that the said Joseph Savage was a surgeon's mate in the Virginia continental line of the revolutionary army; that he entered the service in 1778, and remained therein until the disbanding of the army at the close of the war. His heirs, the petitioners, lay claim to the commutation pay to which officers of the revolutionary army who rendered service until the end of the war were entitled by act of Congress. They have failed to receive the said commutation pay because their said ancestor has been held not to come within the class of officers to whom commutation pay was promised.

The committee are fully satisfied that, by every principle of right and equity, if his case is not within the strict letter of the act of Congress, it ought to be, and therefore report a bill granting to his heirs the five years' pay which their ancestor has failed to receive.



LOTT HALL—HEIRS OF.

[To accompany bill H. R. No. 365.]

JUNE 10, 1854.

ROCKER, from the Committee on Revolutionary Claims, made the following

REPORT.

*Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Lott Hall, deceased, report :*

That they have carefully examined the petition, affidavits, and documents in the case herewith submitted, and that they concur in the opinion expressed by several committees to whom the petition has previously been referred, and adopt, as part of their report, that made by the House of Representatives May 25, 1840, which, to your committee is clear and conclusive that the prayer of the petitioners ought to be granted.

It appears from the papers presented, that Lott Hall entered the service of the United States in May, 1776, as a lieutenant of marines, under Lieutenant Elijah F. Payne, of the ship *Randolph*, of twenty guns, then lying at Charleston, South Carolina, under the command of Captain Cochran; that said Hall entered the service under the regulations of the Congress, and the directions of General Washington, in Massachusetts, where he enlisted twenty-nine men and a boy, whom he transported to Providence, Rhode Island, and placed, as well as himself, under the command of Lieutenant Payne; from Providence they sailed in the month of June, 1776, with a design to make a cruising voyage to Charleston, South Carolina, to join their ship, the *Randolph*. In their passage they took four prizes, the last of which Hall was put in command of as prize-master, with orders to take the prize into Boston; but it was retaken by a British vessel, and Hall carried a prisoner of war to Glasgow, in Scotland, where he was detained about a year, but he was enabled to take passage for Virginia, where he arrived about the 1st of January, 1778, as an exchanged officer; and by the munificence of Patrick Henry, then Governor of Virginia, he was enabled to reach his home in Massachusetts, February 22, 1778, stopping at Philadelphia on his route, and petitioning Congress, while stopping there, for employment, which petition is dated January 8; and after setting forth his adventures and sufferings, contains the following: "I now beg of your honors to consider my sufferings, and if you think me deserving any office on board a continental vessel, and will bestow it upon me, I am willing to enter a second voyage; at least I hope your honors will supply me with money sufficient to carry me to the State of Boston, the State of my nativity."

The original petition is on file in the State Department, and a certified copy accompanies the papers in the case. Upon this state of facts, the claimants ask for the pay and subsistence of said Hall while a prisoner for one year's pay as a supernumerary exchanged officer, and for his share of the prize-money, with such interest as Congress may deem just and right. This claim, growing out of our revolutionary contest like all others arising from the same source, is liable to the objection of the lapse of time since it arose; but, fortunately, there is no statute or limitations to check the justice of a nation, and no principle to stint its gratitude; time only may afford a presumption of payment, but when that presumption is overcome by satisfactory proof, it only gives an additional reason for the speedy liquidation of a just claim.

That the services were performed and the sufferings endured, as alleged in the petition, is proved to the satisfaction of the committee that no remuneration has been received is shown by the fact that Hall was taken prisoner on the first voyage, and by his petitions in 1778 and again in 1808. And as he died shortly after the presentation of the last petition, leaving a family of young children, this affords a satisfactory reason why the claim was not further prosecuted until after the passage of the late act granting five years' pension to certain widows; when, as stated by the affidavit of one of the sons of said Hall, in hunting up evidence to obtain his mother's pension, he discovered the present claim as made to Congress by his father. The widow obtained the pension as the widow of a deceased revolutionary officer, and she and her children now, as soon as they have become acquainted with their rights, revive the claim originally made; and the services and sufferings in the Revolution having been proved, and the lapse of time accounted for, the question as to the amount which the petitioners are entitled to remains to be determined. From the time said Hall first embarked in the service of his country as a lieutenant, May 1, 1776, to the time of his return home from captivity, February 22, 1778, is one year nine months and twenty-two days, which, at \$20 per month, the pay of a lieutenant of marines, as fixed by Congress, amounts to \$434 10. By the resolution of Congress of July 25, 1777, lieutenants are allowed four dollars per week for subsistence, when they are unable to live on board their vessels. If this, from analogy, be assumed as a reasonable compensation for his subsistence from the time he was taken prisoner, September 13, 1776, till his return home, being seventy-five weeks and two days, it would amount to \$301 14.

The claim set up for one year's pay after his return is not allowed as Lieutenant Hall was not an *exchanged continental supernumerary officer*, within the meaning of the resolutions of Congress. It appears by the evidence that £6,210 was paid to the State of South Carolina for prize-money, for the four prizes which Lieutenant Hall assisted in taking; and as it is presumed (for the evidence was destroyed by fire) that in her settlement with the general government, South Carolina credited the government with that amount, the government is liable to the representatives of Lieutenant Hall for his share, whatever the same may be.

*The committee report the accompanying bill.*

LEGAL REPRESENTATIVES OF HENRY HOFFMAN.

[To accompany bill H. R. No. 366.]

JUNE 10, 1854.

Mr. CROCKER, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the claim of the legal representatives of Henry Hoffman, deceased, report:*

That the case was favorably reported on at the 3d session of the 26th Congress, and again at the 2d session of the 27th Congress, and they adopt the reports then made as their report, viz:

"That it appears, by the original papers in the office of the Commissioner of Pensions, that Henry Hoffman enlisted on the 5th of September, 1782, for, and served until the end of, the war, in the second regiment Pennsylvania line. The Third Auditor of the Treasury Department also states that the records in his office show that he received his monthly pay to the end of the war, but did not receive a certificate for the eighty dollars gratuity promised by resolution of Congress, passed May 15, 1778, which provides a reward of eighty dollars for each non-commissioned officer or soldier who had enlisted, or might thereafter enlist, and serve to the end of the war. The case of Henry Hoffman clearly comes within the provisions of that resolution; and the committee report a bill."



JOHN RICE JONES—LEGAL REPRESENTATIVES OF.

[To accompany bill H. R. No. 367.]

JUNE 10, 1854.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of George W. Jones, for himself and others, have had the same under consideration, and respectfully report:*

That in the petition a claim is preferred for the confirmation to the legal representatives of John Rice Jones, deceased, of the "title of said Jones to two tracts of land on the Kaskaskia river, in the now State of Illinois, containing thirty-four hundred and eighty-five acres, being the same referred to in the report of Mr. Robertson, from the Committee on Private Land Claims, made to the House of Representatives of the United States on the 14th of December, 1818." The petition represents the whole or the greater portion of the lands as disposed of at the land office at Kaskaskia, and prays that if it be deemed inexpedient to confirm the title to the identical tracts, he may have authority of law to enter the like quantity in legal subdivisions at any land office in Illinois.

The committee find in the report (dated January 4th, 1813) of the commissioners, at Kaskaskia, that in their list No. 3 of "claims said to be founded on ancient French grants, as confirmed by the governors of the Northwest and Indiana Territories within the district of Kaskaskia, and which said confirmations, in the opinion of the commissioners, ought not to be sanctioned by Congress," the claim of John Rice Jones, assignee of Joseph Creely, is entered as No. 1286, for 1,445 acres and 38 perches; and that in the same list the claim of said John Rice Jones, assignee of the heirs of John Bte. Place, for forty by sixty arpens, is entered as No. 1285, being for twenty-four hundred arpens, or equal to 2,041 acres; aggregate, about 3,486 acres.

The report of these commissioners, which may be found on pages 187 and 188 of the 2d volume State Papers, "Public Lands," printed by D. Green, declares that each of these claims derived its validity from confirmation by the governor; but, in the first case, they did not find the testimony, on which the governor based his confirmation, corroborated in their examination, at a subsequent period, of certain ancient inhabitants; and they regarded that testimony, if credited, as



not sufficient evidence of title, since it did not state that the grant was before the cession of 10th February, 1763; and further, they doubted whether the grant had ever been made, because of the unusual form of the land.

In the second case, the commissioners thought the grant a forgery, and the governor's confirmation fraudulently obtained; yet they admit it probable that "Barrois," the original claimant, "had land in this place, but what quantity is unknown," &c.

These two claims contain, as herein before stated, about thirty-four hundred and eighty-six acres, and are believed to be those referred to as containing thirty-four hundred and eighty-five acres in the report made as far back as December 14, 1818, to the House of Representatives, from the Committee on Private Land Claims, (State Papers, volume 3, page 349.) To that report, made within six years from the return of the commissioners, this committee now beg leave to make special reference.

It will be found that the committee of 1818 refer to the evidence, &c., then before them, as making it appear "very clear that the petitioner's claim ought not to have been rejected, and that every position taken by the commissioners in support of their opinion is indefensible." They refer also to facts detailed before them, "which not only destroyed entirely the reasoning of the commissioners, and showed conclusively that their arguments were fallacious, and the facts on which they predicated them misconceived, but satisfied every member of the committee that there was no ground for a suspicion of forgery," &c. And the report of 1818 further states that the committee were "unanimously of opinion that as much of the claim as has not been sold by the United States ought to be confirmed to the petitioner, by the release of the claim of the United States to it;" and "in regard to that which has been sold, as they think that it would be improper to rescind the sale," they expressed "the opinion that the petitioner should receive its value at the time it was sold."

As it is admitted that the claims were confirmed by the governor, and the report of 1818 clears them of the suspicion of forgery or fraud, the committee, referring to the Senate files in 1836 on the subject of the petition of James O'Hara, and to the precedent furnished by the act of Congress of 2d July, 1836, for the relief of the executors of James O'Hara, think it proper that relief should be extended to the petitioners by a law authorizing them to locate the area of the said claims, but confining them to Illinois, and to legal subdivisions, and to lands which, at the time of location, shall have been offered at public sale, and which may be subject to private entry; and the committee accordingly report a bill.

ROBERT F. MCGUIRE.

[To accompany bill H. R. No. 368.]

JUNE 10, 1854.

HOLDS, from the Committee on Private Land Claims, made the following

## REPORT.

*Committee on Private Land Claims, to whom was referred the petition of Robert F. McGuire, for a confirmation of his title to certain lands in De Bastrop Grant," in Louisiana, respectfully submit the following:*

petitioner, R. F. McGuire, states that he is the owner of a tract containing four hundred arpents, situate in, and derived from, "Arson De Bastrop grant," in the State of Louisiana. The title is claimed partly in his own right and partly in right of his An act was passed March 3, 1851,\* for the purpose of settling land claims within said grant; but the petitioner alleges that does not come within the strict letter of that act, for the sole that at that time he did not actually occupy or cultivate the land ion.

ie papers accompanying the petition, it appears that this tract d on the 17th April, 1809, by A. Morehouse, (who held under Bastrop grant,) to Louis Lamy and Michael LeVillain; that, at h of Lamy, the land was inventoried in 1812 as belonging to his that on partition of his estate, on the 26th April, 1820, that in- became the property of the petitioner's wife, as one of Lamy's hat the petitioner subsequently, viz: in 1835, purchased of the M. Villain their undivided interest in the same.

testimony of Charles Roy, on file with the papers, states that he seven years of age, and a native of that (Ouachita) county. It hat this land was occupied and cultivated as early as 1806, and, amy's death, by Charles Ghin, who kept thereon a stock of cattle ses for Lamy, and that the land was then called Lamy's, and r since been so called by the old settlers. There is also on file ord of a suit against said Ghin, in which it appears by his own , that he, Ghin, had no right to the land, and that he had sold rovements, &c., to Lamy, in whom the title was vested.

grant to De Bastrop was declared void by the United States ie Court, in the case of the United States *vs.* the cities of Phila-

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\* Statutes at Large, page 598, vol. 9.

delphia and New Orleans, (11 H. R., 653;) and it was for the purpose of relieving bona fide claimants under De Bastrop that the act of March 3, 1851, was passed. As a strict construction of that act does not relieve him, the committee believe that the facts presented show that he is, in equity, entitled to a confirmation of his title, and accordingly report a bill for that purpose.

MOSES D. HOGAN.

[To accompany bill H. R. No. 369.]

JUNE 10, 1864.

Mr. BALL, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred the petition of Moses D. Hogan, asking compensation for property belonging to him destroyed by the Sioux Indians have had the same under consideration, and respectfully ask leave to report:*

That the papers in this case show that in August or September, 1842, he said Moses D. Hogan entered into a contract with Amos J. Bruce, then the acting sub-agent on the part of the United States for the Sioux Indians, near Fort Snelling, to furnish said Sioux Indians with beef and stock cattle; and that having said cattle on hand, he procured the necessary assistance, and proceeded to drive the said cattle to the point stipulated for their delivery; that when within about sixty miles of such place, a large band of Indians, (armed,) supposed to be a band of the Sioux, fell upon them, (said Hogan and his assistants,) and after ransacking their baggage-wagon, and by forcible means taking from them their provisions, camp equipage, blankets, clothing, &c., rushed upon their drove of cattle, shooting some and driving off others, to the number of twenty in all, which are valued at *twenty-five dollars each*.

The foregoing facts are set forth in the petition of Moses D. Hogan, to which his affidavit is affixed in due form, and it is fully corroborated by the depositions of George M. Pemberton and John N. Owsley, who testify that they were in the employ of said Hogan, as assistants, in driving the cattle referred to to the point named for their delivery.

The testimony further shows that Hogan, through his attorneys, Messrs. Amos and John E. Kendall, in 1843, made application at the office of the Commissioner of Indian Affairs for payment of this claim under the provisions of the intercourse act of 1834, and that the Messrs. Kendall were informed that before the department could act, the requirements of the intercourse law must be conformed to, and that for that purpose the papers were then transferred to Amos J. Bruce, the Indian sub-agent for the Sioux, with directions to bring the matter before the Indians in council, and to report the result. It appears from a letter of Luke Lea, esq., late Commissioner, that on the 9th of January following, (1844,) Mr. Bruce, through Governor Chambers, made report stating that he had been unable to discover the band to which the Indians who committed the depredations belonged, but supposed they were a mixed band residing near the Traverse des Sioux, *not in receipt* of annuities from the government of the United States.

Mr. Lea further says, in the letter referred to, that Mr. Bruce pro-

nounces the claim a just one, and that it should be paid. He also adds, that the department returned the papers to Governor Chambers, in February, 1844, with the remark *that the claim seemed to be well established*; but, as the band to which the depredators belonged was unknown, a difficulty in the way of payment presented itself, which could be obviated only by identifying them to be members of a band drawing annuities. Here the correspondence between Governor Chambers and Mr. Bruce and the government ceased. In a subsequent letter of Mr. Lea, dated February 4, 1853, he again expresses the opinion that the claim is a just one and ought to be paid; but that, inasmuch as it does not appear that the Indians by whom the depredation was committed were entitled to annuities from the government, it cannot be paid without an appropriation by Congress.

The present Commissioner of Indian Affairs, in his letter dated February 9, 1854, which is on file among the papers in the case, endorses the opinion of his predecessor as to the correctness of the claim, but gives it as his opinion that the acts of 1851 and 1852, requiring "all annuities and other Indian moneys" to be paid directly to the Indians, *per capita*, would prevent the payment of this claim, except by special act of Congress, even if the band could be discovered, and should be a band drawing annuities from the government.

The committee deem it unnecessary to do more than to call attention to the terms of the intercourse act of 1834, which provides that "If any Indian or Indians belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent, to make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury; and in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guaranty to the party so injured an eventual indemnification."

That the contract for the delivery of the cattle to the sub-agent was entered into; that Hogan, while making the attempt to fulfil the terms of his contract, was robbed of his cattle to the number of twenty; that they were worth \$25 per head; that he presented his claim for adjustment without unreasonable delay; that the justness of his claim has been always acknowledged by the department appears to be undisputed; and that the spirit, if not the letter, of the law, was intended to cover cases of this description, seem to us not to admit of a doubt. *The committee therefore report the accompanying bill.*

BREVET CAPTAIN J. H. LENDRUM.

[To accompany joint resolution H. R. No. 26.]

JUNE 10, 1854.

Mr. McDougall, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the memorial of Brevet Captain J. H. Lendrum, acting assistant quartermaster of the United States army, report:*

That they have carefully considered the facts presented by Captain J. H. Lendrum, and find that on the fourth day of May, A. D. 1850, and for some two years previous, he was performing quartermaster duty in the city of San Francisco, and that at the same time he was doing garrison duty at the Presidio, a government post about three miles from San Francisco; during which time he disbursed between one and two hundred thousand dollars. That during the first quarter of the year 1850, he disbursed between twenty and thirty thousand dollars; that during the second quarter of that year, an extensive fire destroyed a large part of the city of San Francisco, and threatened to destroy the building used as the quartermaster's office. That at the time said fire broke out, Captain Lendrum, in the regular discharge of his official duty, was at his post three miles distant, and upon receiving the alarm, hastened to the city for the purpose of protecting and preserving his papers and property. That upon his arriving at his office, he found that, alarmed for the safety of the building, Major McKinstry and other officers of the United States army, and friends of the memorialist, had forced open the door and windows of the office and removed his papers to different parts of the city, scattering many of them loose in the streets; several of which were subsequently picked up on the public plaza. The building used for an office was one of the most safe in San Francisco; but at the time of the removal of the papers was in imminent danger—it being then on fire in several places.

These facts are all well attested by several of the officers of the army and citizens of San Francisco.

It further appears, that immediately after the fire, Captain Lendrum examined his vouchers, and found they presented an amount less than the amount charged as disbursed by him, as set forth in his memorial; and that Major R. Allen, quartermaster United States army, caused Mr. McKay, his disbursing clerk, to examine the books, vouchers, and moneys in the possession of said Lendrum. Mr. McKay testifies to

the deficit, and that he found two charges for which there were no vouchers, corresponding very nearly in amount with the apparent deficiency.

It further appears that on the second of May, two days preceding the fire, the clerk employed by Captain Lendrum was discharged, and that he was without a clerk at the time of the fire.

Vernon Dorsey, the clerk referred to as having been discharged on the second of May, testifies that it was customary in the office "carefully to examine the papers, vouchers, accounts, and funds of said department, at least as often as once each month, and that the results of such examinations were, to the best of his recollection, uniformly satisfactory." "That on or about the first of May, 1850, he made a thorough and strict examination of the accounts, papers, and vouchers in the office of said department at San Francisco aforesaid, and also of the quartermaster's funds then and there on hand, and that the amount of said funds was correct, and, after deducting the amounts of the several vouchers, sufficient to meet the amount called for by the account-current."

From the testimony, which is very full upon the subject, it appears that Captain Lendrum was in no respect chargeable with neglect in not being on the ground at the time it appeared necessary to remove the property in his office to secure it from destruction; that the removal was made with as much care as is ordinarily practicable under like circumstances; that many of his papers were scattered and lost during the confusion of the fire; and it further appearing that his accounts were properly balanced, and his funds, vouchers, and accounts found to be correct but two days preceding the fire, and it further appearing immediately after the fire, that his books and charges accounted for the deficit of money for which no vouchers appeared, your committee can see no good reason to doubt the entire justice of the claim of the memorialist. The claim to a credit for the amount set forth in the memorial is established as perfectly as is required in proceedings in courts of justice; and there are no facts in the departments at Washington, or within the knowledge of this committee, to impair the force of the case presented. The committee, therefore, report a joint resolution, and recommend its passage.

OLIVER BROWN.

[To accompany bill H. R. No. 373.]

JUNE 10, 1864.

Mr. DENT, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom were referred the petition and papers in the case of Oliver Brown, make the following report:*

The petitioner was a private in Captain Harding's company, New York volunteers, commanded by General Peter B. Porter, in the war of 1812; says he was wounded in the left foot at the sortie at Fort Erie, in 1814, by the bursting of a bomb-shell thrown by the enemy, and is still considerably disabled in consequence of said wound. Thomas Paliday and Nathan Harrens, two of his fellow-soldiers, testify that they were present, and know that Oliver Brown was thus wounded. Uriah Smith and J. Purdy, whose credibility is certified to, have examined Oliver Brown, and find him injured in the left foot, and consider him half disabled thereby. The rolls in the War Office show that Oliver Brown performed the service as stated, but do not show that he was wounded. The concurrent testimony of two of his comrades, whose credibility cannot be doubted, induces the committee to report the accompanying bill.





EDMUND MITCHELL.

[To accompany bill H. R. No. 374.]

JUNE 10, 1854.

Mr. DENT, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom were referred the papers in the case of Edmund Mitchell, make the following report:*

Petitioner states that he entered the army in 1793, in what was termed Wayne's war, having enlisted to serve under Captain Alexander Gibson, in Wythe county, Virginia. In the battle with the Indians at Fort Recovery, he received a wound in the left ankle by a gun-shot. Under treatment his wound partially recovered, and his name was withheld from the list of wounded by his own special request, because he wanted to go south with the army, and was afraid he would not be allowed to do so if he was put upon the list of wounded. The said wound has given much pain, and he has not been able to labor for the last sixteen years. Some six or eight persons, who state they have known petitioner from twenty-five to forty years, certify to his good character for truth and veracity; know of his wound and the sufferings produced thereby, and state that they have always understood that he received said wound in battle, fighting the Indians.

Dr. P. C. Ellis certifies that the wound is a running sore, which produces inflammation from the ankle to the knee-joint, and that it requires dressing from three to four times a day. General William O. Butler, of Kentucky, certifies to the high standing and veracity of Dr. Ellis and all the other witnesses who testify in favor of Edmund Mitchell. The committee, therefore, ask leave to report the accompanying bill.

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G. W. TORRANTS.

[To accompany bill H. R. No 375.]

JUNE 10, 1854.

Mr. DENT, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom were referred the petition and papers in the case of George W. Torrants, make the following report:*

Petitioner asks to be placed on the roll of invalid pensioners, and to be allowed such other sum as Congress may think proper to award him for extraordinary service rendered by him, independent of his duty. The papers in this case show that G. W. Torrants was orderly sergeant Capt. H. Fairchild's company Louisiana mounted volunteers, in the war with Mexico. On the 8th September, 1847, by order of Major H. H. Hays, he commanded an expedition against a body of the enemy near the city of Jalapa, whom he put to flight. Aiming to return to the city, he found himself intercepted by a large body of the enemy, and was compelled to take the Vera Cruz road. In crossing the National Bridge, when about one-third of the way across, he was attacked by the enemy in large force from different directions. In this crisis he gallantly charged the enemy in great force, and cut his way, with a great loss. This engagement at the National Bridge occurred on the 8th September, 1847. Col. Hughes, in his report of this affair, refers to Sergeant Torrants in a complimentary manner. He says "the conduct of Sergeant Torrants was equal, in gallantry, to anything that we saw under his observation during the war," and recommends him to the favorable consideration of the government. Col. Hughes also certifies that Sergeant Torrants was also seriously injured in the action at the National Bridge. Capt. Fairchild states, "that he was gallant in the face of the enemy, and that he was always active and energetic in the discharge of his duty." Capt. Fairchild also certifies that he was wounded in said engagement. The army surgeon certifies that he was wounded in said engagement. The same surgeon, (Wake Bryarly,) assistant surgeon in the District and Maryland regiment, and now physician at the State hospital in California, certifies on the 11th January, 1854, that he had the said Sergeant Torrants under his care, in the hospital, for the same wound received at the National Bridge in Mexico, and that his present disability proceeds from said injury. The petitioner has been examined by the committee personally, touching all the facts, and find him disabled so that he cannot follow his trade,

that of a joiner. There is other testimony, which the committee deem it unnecessary to detail in this report. They are well satisfied that the petitioner is entitled to be placed on the pension roll at such rate as his rank would entitle him; but, in view of his gallantry, by which it is thought he saved many valuable lives and much property to the government, and as there are precedents in which officers high in command have been rewarded, your committee can see no objection, but rather propriety, in rewarding subordinates. They therefore report a bill.

JAMES BUTLER.

[To accompany bill H. R. No. 376.]

JUNE 10, 1854.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

## REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of James Butler for a pension, report :*

That the said Butler was an ordinary seaman on board the United States ship Independence in the year 1816, and that while in the line of duty as seaman, he incurred a disability by a rupture, of which he has never been relieved ; that he has applied for a pension at the proper department, and his petition was rejected for the want of the surgeon's and captain's certificate, which the rules and regulation of the department require.

The testimony before the committee is :

1. The certificate of Lieutenant Bolton, of the United States navy, that he recollects the said Butler as a seaman at the time alluded to, on board the United States ship Independence.

2. The certificate of Surgeon Townsend, who was attached to said ship as assistant surgeon, says that James Butler, an ordinary seaman belonging to said ship, was ruptured on the right side during the year 1816 ; and that in 1826 he gave said Butler a certificate (after again examining him) to this effect. This certificate having been lost, said Townsend, in 1843, gave said Butler a second certificate.

3. Assistant Surgeon Washington, of the United States navy, certifies in 1844, renewing said certificate in 1850, that said Butler's rupture is of long standing, and that he is unfit for labor of any kind.

4. Said Butler presents in evidence his certificate of discharge from service.

Your committee believing that the said Butler was injured while in service of his country and in the line of his duty, and believing that the evidence given in support of the facts set forth in his petition is worthy of admission, they report a bill for the relief of the said Butler, and do hereby recommend the passage thereof.



JOHN H. HICKS.

[To accompany bill H. R. No. 377.]

JUNE 10, 1864.



Mr. VAIL, from the Committee on Invalid Pensions, made the following

## REPORT.

*of the Committee on Invalid Pensions, to whom was referred the petition of John H. Hicks, for an invalid pension, beg leave to report:*

That the said Hicks entered the service of his country as a private soldier in July or August, 1814, in the Virginia militia regiment, under Captain Henry Welch, and that he continued in service for six months, and was discharged in January or February, 1815; that during the time he was in said service, a rheumatic disease attacked him, which has continued until he has become entirely helpless; that the only proof which he can give of these facts is the affidavit of a fellow-soldier, Henry Kyle; the officers of his command being deceased, and his comrades, other than said Kyle, dispersed. The said Kyle, by oath, (his character for truth and veracity being duly testified to) says that he knew the said Hicks as a healthy and able man before he entered the service, and believes that he contracted the disease by which he is now totally disabled while in the said service; that he, said Kyle, was with the said Hicks in service, and in the same company; that he knows no one now living who was with them. Two physicians, who are proved to be men of the profession, certify to the fact of the disability of said Hicks; and Hon. Mr. Dunham, of Indiana, says that he is personally acquainted with the said Hicks, and represents him to be a man of great integrity of character; that the said Hicks has, through the Pension Office, obtained for his services a bounty land bestowed by Congress upon soldiers of the late war; and that pride has prevented him, the said Hicks, from applying for relief from Congress until this time, when he has been driven to it by the most dire necessity; and your committee having, after due investigation, become satisfied that the petitioner is entitled to the relief for which he seeks, recommend the passage of the accompanying bill.





MRS. ANNE W. ANGUS.

[To accompany bill H. R. No. 379.]

JUNE 10, 1854.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Anne W. Angus, report:*

That Mrs. Angus is the widow of Captain Samuel Angus, formerly of the United States navy. By an act of Congress approved January 19, 1849, a pension was granted her for five years, on account of the services of her husband, whose death was occasioned by wounds received in service while fighting the battles of his country, which pension will expire on the 4th of March next. It appears that Captain Angus entered the naval service at the age of fifteen, in the year 1799, and continued in it till the latter part of Mr. Monroe's administration, in 1824. He was wounded in four separate engagements with the enemy, and sustained the character of a brave and meritorious officer. Two of these wounds were upon his head, and occasioned temporary fits of insanity during the latter part of his life, and hastened his death. This latter fact is sustained by the testimony of the surgeons who attended him. These wounds caused him great suffering, and rendered him a source of deep affliction to his family. Towards the close of Mr. Monroe's administration he was dismissed the service, without a court-martial, for writing a letter to the Secretary of the Navy which was not considered respectful. It also appears that at the time of writing this letter he was laboring under the temporary insanity to which his wounds subjected him, of which Mr. Monroe afterwards became satisfied, and recommended that his successor, Mr. Adams, should reinstate him; saying in his letter to Mr. Adams, "from representations made to me by others, in which I have perfect confidence, I am satisfied that it comports with justice, as well as humanity, to reinstate him. I have no right to express any opinion on this point, in expectation that it will have any weight in your decision on the subject; but, at his earnest instance, have thought it proper, and a duty, as his removal proceeded from me, to communicate the change which has been wrought in my mind respecting him." In consequence of his liability to these attacks of insanity he was not reinstated, but allowed a pension, which he continued to draw until his death, on the 29th May, 1840.

In a letter received by the committee from the Commissioner of Pensions, dated the 22d instant, he says, "that had the death of Captain

Angus occurred while *he was yet in the naval service*, and in consequence of injuries received in the line of duty, (which, from the Report No. 74, 1st session 30th Congress, by the Naval Committee, and the subsequent granting of the pension, appears to have been admitted by Congress,) Mrs. Angus would, under the general law granting navy pensions, have been entitled to a pension from the date of her husband's death, during life or widowhood." The committee are informed that Captain Angus left his widow and children in destitute circumstances, and that their only means of support is the pension now about to expire.

From the facts of the case, as proved, it comes within the line adopted by this committee for favorable consideration.

Captain Angus was disabled by wounds of a distressing character received while in the service of his country, and the result of these wounds affected his mind as well as body, to such a degree as to prevent him from making any adequate provision for his family. They were thus left, while he still existed, more destitute than if death instead of insanity had visited him.

The committee are of opinion that Mrs. Angus is entitled to the aid of her country, and therefore report a bill providing that the pension granted her by the act of Congress in 1849 for five years be extended to the further term of five years.

**BETSEY NASH.**

[To accompany bill H. R. No. 380.]

**JUNE 10, 1854.**

Mr. VAIL, from the Committee on Invalid Pensions, made the following

**REPORT.**

That they have had under consideration the petition of the widow of Sylvester Nash, late surgeon of the United States in the war of 1814, and are of the opinion that Dr. Nash, in his lifetime, was fully entitled to a pension. At several times, bills have been reported in favor of placing his name upon the roll of invalid pensioners; and although he failed in his efforts for sixteen years, and until his death, from various causes, yet the justness of the claims which he presented, accompanied by proof of the strongest kind, as far as it goes, (not being sufficient, however, to cause action favorable to the petitioner at the department,) sustains in his widow, the petitioner, the strongest hopes that Congress will accord to her that which was unfortunately denied to him while living. Your committee, after due examination of the papers, find that the report made by the Committee on Invalid Pensions at the 25th Congress embraces the principal points of evidence in the case, and beg leave to adopt it as their own.

**JANUARY 9, 1839.**

*The Committee on Invalid Pensions, to whom was referred the petition of Sylvester Nash, report:*

That the petitioner represents that, in the summer of 1814, a draught of militia was called for the defence of the northern frontier, and that he volunteered as a private soldier, under the command of Major Elihu Hodgkiss, and marched to Sackett's Harbor. That while at that place it was very sickly; and being a physician, he was requested by the officers to attend the sick, (there being no surgeon among the volunteers,) which service he performed, and for which he received no compensation, except as a private soldier. After his return home, he received a warrant as surgeon to Colonel Erastus Cleaveland's regiment of detached militia, and repaired again to Sackett's Harbor, and discharged the duties of physician until about the 20th of October, when

he was attacked with dysentery, which continued upon him the remainder of the time he was in the service, and for about six months after and that he was unable to attend to his profession or perform any labor for a year, when he was attacked with chronic rheumatism, which continued in a severe manner about six months; and, from that period to the present, he has been affected with a weakness in the small of his back and kidneys, disabling the lower extremities so as to unfit him almost entirely for pursuing any kind of business.

The petitioner further represents that he applied to the War Department for a pension, but his claim was objected to, on the ground that he was mustered and returned as a well man; which he explains, by saying that the orders of the muster-master required every man who could walk to appear on parade for mustering; and that, though very feeble, he was then able to walk, and appeared accordingly, and was mustered; but the department thought the case not coming within the rules prescribed, and finally rejected it, with a recommendation that he apply to Congress.

The authority by which he acted as surgeon, and his honorable discharge, accompany the papers.

Major Curtis testifies that he served as surgeon, as related; that he was taken sick with the dysentery, which continued for several months after he left the service; that the disease was very prevalent at that place at the time mentioned; that he was well acquainted with the petitioner for three years before he went into the service, and that he was a well, healthy man; that he has been disabled ever since; and that he believes his disability is owing to his sickness contracted in the service, at a place and time peculiarly calculated to produce the disease. Quartermaster Eliel Barber testifies also to his service and sickness. Nathaniel Kimball testifies that he was acquainted with him before he went into the service; was with him at Sackett's Harbor; that the cantonment of the regiment to which he belonged was a very sickly place; that he knew of his sickness, and that he has been sick ever since. Daniel Curtis also testifies to the same. Reuben Root, Zenas Nash, John Knox, Elias Bois, and Amos Frost, all testify that he was a well man when he went into the service, and that he has never been well or able to attend to the duties of his profession since.

Doctors Nathaniel Rose, Eli Botsford, Edmund Allen, John Livermore, N. B. Meade, and Gurdon Hyde, all testify that, from a careful examination of his case, they are of opinion his disability had its origin in the disease contracted at Sackett's Harbor, while in the public service; that it now consists in a weakness across the small of the back and in the region of the kidneys. Doctors Allen and Livermore state his disability three-fourths in 1822. The other physicians place his disability total. The last certificate is dated in 1831.

The committee think the petitioner entitled to relief, and therefore report a bill.

THOMAS ELLIS.

[To accompany bill H. R. No. 381.]

JUNE 10, 1854.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

## REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Thomas Ellis, of Platte county, in the State of Missouri, have had the same under consideration, and respectfully ask leave to report:*

That the petitioner enlisted into the United States service on the 14th of October, 1826, and the muster-rolls show a continued service up to the 1st of April, 1848, when he was discharged in the city of Mexico, disabled by sickness, as stated in the surgeon's certificate hereunto annexed. Your committee annex a letter from the Hon. J. E. Heath, Commissioner of Pensions, to one of the committee. These papers show a continued service of over 21 years, and the petition sets forth that he was in active service during that time. He served as orderly to General Gaines in the Black Hawk war of 1831, and afterwards was engaged in the Florida war for about two years and seven months, under the command of Major Belknap, and was also engaged in the Mexican war; that he was in the engagements of Palo Alto and Resaca de la Palma of the 8th and 9th of May, 1846, and was at the taking of Matamoras and Monterey, in Mexico; after which he marched to Motrallis, then back to Monterey; from thence to Victoria and Tampico, where he was taken sick and left in hospital. As soon as he recovered sufficiently he was commanded to take charge, as sergeant, of a company of men, and proceed to the city of Mexico, which he did; and upon his arrival at said city he was again taken sick, and went into hospital, and was finally discharged the service, for the reasons set forth in the surgeon's certificate of the 25th of March, 1848.

Your committee are of the opinion that the length of time which the said Ellis served, change of climate, and the fatigues of the service, have completely destroyed his constitution, so as to prevent him from laboring to support himself and family, and that he is entitled to a full disability pension. We would state that his age was 43 years in the fall of 1851; and we report a bill for his relief by placing him on the invalid pension-roll at eight dollars per month from the 11th of May, 1852, during his life.

PENSION OFFICE,  
May 11, 1852.

SIR: I have the honor to return herewith the papers of Thomas Ellis accompanied by a copy of the surgeon's certificate upon which he was discharged from company I, 3d regiment of infantry. It is not in our power to furnish copies of his various discharges, as you request, as they are not on our files; but we can state that the muster-rolls show his first enlistment to have been on the 14th of October, 1826, and that he was continuously in service till the 1st of April, 1848, when he was serving out his fifth enlistment. The general laws granting invalid pensions would embrace the case, provided it could be shown, in positive terms by the certificate of some commissioned officer under whom he served or by an army surgeon, that the disease for which he was discharged was contracted while in the line of his duty as a soldier, the time when, and the place where it was incurred, being stated. It is also necessary that the claimant be examined by two surgeons or physicians, certified to be reputable in their profession, as to the character and degree of disability. The certificate of Col. Chandler and others is not deemed sufficiently positive and explicit.

I have the honor to be, very respectfully, your obedient servant,

J. E. HEATH,  
*Commissioner of Pensions.*

HON. F. S. MARTIN,  
*House of Representatives.*

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I hereby certify that Thomas Ellis, a private of company I, third regiment of United States infantry, is incapable of performing the duties of a soldier, for the following reason: a physical infirmity, such as a chronic affection of the lungs, which resists all treatment.

And I further certify, that during the last three months the said invalid has been under medical treatment by me ninety days, and in the hospital ninety days, and therefore, in the opinion of the undersigned, the interest of the service requires that he should be discharged from the army.

Given at city of Mexico this twenty-fifth day of March, 1848.

CHAS. C. KING,  
*Assistant Surgeon U. S. Army.*

Approved:

R. S. SATTERLEE,  
*Surgeon and Medical Director.*

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The above named Thomas Ellis was enlisted by Lieut. A. W. Bowman, of the third regiment of United States infantry, on the 16th day of September, 1844, at Fort Leavenworth. He is five feet eight and a quarter inches high, thirty-nine years of age, and by profession a soldier. During the last three months, the said invalid soldier, now

recommended to be discharged, has been on the sick list ninety days, and has been reported fit for duty, during the same period, — days.

B. CHANDLER,

*Captain 3d Infantry, Comg. Company I.*

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Discharged this first day of April, 1848, at the city of Mexico, in conformity with the 32d article (revised) "General Regulations for the Army," and directions received from headquarters army of Mexico, dated March 30, 1848.

J. VAN HORNE,

*Captain 3d Infantry, Comg. the Regiment.*

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The foregoing paper is truly copied from the original on file in the Pension Office.

J. E. HEATH,

*Commissioner of Pensions.*

MAY 8, 1852.





CHARLOTTE S. WESTCOTT.

[To accompany bill H. R. No. 393.]

JUNE 10, 1854.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Charlotte S. Westcott, widow of Captain George C. Westcott, late of the second regiment of infantry of the United States army, praying for a pension, report:*

That they have examined the claims of Mrs. Westcott for relief from the government, and find the facts of her case to be as follows:

That Captain Westcott entered the service as a lieutenant in the year 1838, and was in active service during the war in Florida for three years; that he remained in the army from that time forward, serving in various quarters, much of which service was at frontier posts, until the war with Mexico took place, when he joined his regiment at Vera Cruz, under the command of General Scott. He remained with that division of the army and participated in the subsequent battles occurring on the march to Mexico; and at Chepultepec, although then belonging to the staff, he volunteered as one of the forlorn hope in the attack on that citadel, and was brevetted a captain for his gallant and distinguished conduct.

He was afterwards, with his regiment, ordered to California under the command of General Bennet Riley, to which place his wife, the present petitioner, accompanied him, and remained there until ordered home upon the recruiting service. After being engaged for two years in that service he was again ordered to join his regiment in California, for which place he sailed on 20th of December, 1852, and during his passage across the Isthmus was attacked by the yellow fever and died on the 8th of January following.

Captain Westcott was an officer of much distinction and merit. He was actually engaged in the service of the country when the disease overtook him by which he died, and your committee believe the case to come fully within the precedents heretofore established by Congress on such subjects, and therefore recommend that the claim be allowed, and report a bill for that purpose.



**THOMAS BRONOUGH.**

[To accompany bill H. R. No. 383.]

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**JUNE 10, 1854.**

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Mr. EDMANDS, from the Committee on Invalid Pensions, made the following

**REPORT.**

*The Committee on Invalid Pensions, to whom was referred the petition of Thomas Bronough, report :*

That Thomas Bronough is now on the pension rolls, at the rate of \$4 per month, on account of having received wounds in his right side while in service opposite Fort Meigs, Ohio, as a private in Captain Kerr's company, in Colonel Dudley's regiment of Kentucky infantry. His papers show satisfactory proof that he is now totally disabled. The committee think his pension should be made equal to \$8 per month, and they report a bill accordingly.



ANNA E. COOK.

[To accompany bill H. R. No. 334.]

JUNE 10, 1854.

Mr. EDMANDS, from the Committee on Invalid Pensions, made the following

## REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Anna E. Cook, report:*

That Anna E. Cook is the widow of Anson J. Cook, as appears by the certificate of marriage presented; that they were married in the city of Brooklyn on the 3d day of August, 1847, by Dr. W. H. Lewis, rector of the church of the Holy Trinity in that city. Said Anson J. Cook was a lieutenant in the 2d regiment of artillery, and died at Tampa Bay, of yellow fever, on the 15th October, 1853, while in actual service, leaving his widow with one child. Cook graduated at the Military Academy, West Point, in the summer of 1847, and was immediately ordered to Mexico. After remaining there thirteen months, he was stationed at Fort McHenry, Maryland, for ten months; thence to Indian river, Florida, where he spent fifteen months; thence to Charleston harbor, where he remained fourteen months. The last twenty-three months of his life were spent at Forts Mead and Brook, where he died. In no part of the southern country were the ravages of the yellow fever so severely felt as at Tampa Bay. It is stated that Lieutenant Cook was, at the time of his death, the last remaining officer at the post, every officer, and most of the privates, having previously fallen. He died while in the discharge of his duty, under the most appalling circumstances, and from the time of his graduating to that of his death he had been almost constantly in active service. He has left a widow and child in poverty. The committee think Mrs. Cook is entitled to relief, and they report the accompanying bill.



ABRAHAM AUSMAN.

[To accompany bill H. R. No. 365.]

JUNE 10, 1854.

Mr. EDMANDS, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Abraham Ausman, report:*

That Ausman is now a pensioner, at the rate of \$6 per month, in consequence of having received three wounds while serving as first sergeant in Captain Davis's company, of regiment commanded by Col. Dudley, on the 20th October, in 1814, at Burlington, Lower Canada. He now produces the certificate of respectable physicians, declaring his to be at this time a case of total disability from said wounds. Your committee recommend that his pension be increased to \$8 per month, and report a bill accordingly.



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FRANCIS PETTIT SMITH.

[To accompany bill H. R. No. 387.]

JUNE 10, 1854.

Mr. BRIDGES, from the Committee on Patents, made the following

REPORT.

*The Committee on Patents, to whom was referred the petition of Francis Pettit Smith, beg leave to report:*

That the said petitioner represents in his memorial "that he is the inventor of a new and useful improvement in propelling steam and other vessels, for which letters patent were duly granted to him in England on the 31st May, 1836, and subsequently in the United States, on the 12th November, 1841; the latter patent extending fourteen years from the 31st May, 1836, for which he paid into the patent fund the sum of five hundred dollars." He further represents that he "has been unable to reap any reward for his invention by bringing it into actual use; that a short time before the expiration of his patent in the United States he made a *bona fide* sale thereof to Russel Sturgis and Samuel Allinson, citizens of the United States, to indemnify them for large sums of money advanced by them to him, amounting to more than ten thousand dollars, and authorized them to use his name to obtain a renewal of the same under the laws of the United States. Application in due form for an extension of said patent was made by said Sturgis and Allinson, in the name of said petitioner, to the Commissioner of Patents, and his agents were informed by the Commissioner of Patents that the application was too late by *three days*—there not being, by that time, sixty days intervening between the application and the extension of the patent, which, under the existing patent laws, and the practice of the department, were required to give notice of the application for such extension; that the agent of said petitioner was under the impression the application was in time; and it was not until he arrived at the Patent Office, and was informed of the fact by the Commissioner, that he learned that he was too late by three days."

The committee, being fully satisfied that the above and foregoing related facts are substantially correct and true; that the memorialist paid into the patent fund five hundred dollars for his letters patent in the United States, and that he has never realized any return whatever by the sales of his improvement; that he transferred his right thereto to Sturgis and Allinson, as an indemnity for moneys advanced by them to him; that they, the said assignees, have never made any sales or realized any benefit therefrom whatsoever; that the mistake or accident

of the agent caused the delay of an application for the period of thirty days, necessary to give the sixty days' notice required by the practice of the department, before the expiration of the patent—are of opinion that these should not prevent the memorialist from having the benefit of the 18th section of the act of July 4, 1836, extended to him.

They therefore recommend, for the relief of the memorialist, the passage of the accompanying bill.

TITIAN R. PEALE.

[To accompany bill H. R. No. 388.]

JUNE 10, 1854.

WDLER, from the Committee on the Library, made the following

REPORT.

*Committee on the Library, to whom was referred the memorial of Titian R. Peale, report:*

he memorialist was appointed by the Navy Department on of December, 1836, a member of the scientific corps to be at the South Sea surveying and exploring expedition, organized act of Congress of the 18th of January, 1836. He performed and valuable service during the expedition, and was on board d States ship Peacock when she proceeded to the northwest America. On the 18th of July, 1841, that vessel was entirely endeavoring to enter the mouth of the Columbia river, the offi crew having scarcely time to escape with their lives, and able to save anything from the wreck. The memorialist upon sion lost all his personal effects—his books and instruments, ge number of articles which he had collected in his depart- d which it would be difficult to replace. But, notwithstanding ility, the memorialist was enabled, by the exertions of the com- officer, Captain Hudson, and his own strenuous efforts, to re- extravagant prices, and as far as practicable from his own ch articles as were indispensably necessary for the completion contemplated surveys of the country, and was thus enabled to his usefulness to the expedition, and, with others of the scien- as, traversed over a large portion of Oregon and Upper Cali- ereby adding much to the information of those countries which possess.

emorialist returned to the United States, on board the United ip Vincennes, in the summer of 1842, and in 1846 petitioned for relief. The Committee on Naval Affairs reported a bill to y him for his losses by the wreck, and also for arrearages of h had been suspended by the Navy Department to await the Congress in relation to the reports on the scientific results of tion. (H. R. report No. 59, bill 663, 29th Congress 2d ses- 7.) The memorialist was employed at a reduced compensa- er the direction of the library committee, in preparing his re-

port, which was printed by authority of Congress in 1847, when he sought other employment.

The memorialist has claimed arrearages of pay, which he believes due to him from the United States, in addition to indemnity for the loss of property by wreck of the United States ship Peacock; but, at his request, the committee have not considered the claim for arrearages of pay, but have fully considered the remaining parts of this case, and are unanimous in their opinion that the memorialist is justly entitled to indemnification for the losses suffered by the wreck of the United States ship Peacock. They therefore report a bill to afford full relief to the memorialist, and recommend its passage.

PAYMENT OF MONEYS INTO THE TREASURY OF CALIFORNIA.

[To accompany bill H. R. No. 90.]

JUNE 10, 1854.

Mr. HAVEN, from the Committee of Ways and Means, made the following

REPORT.

The Committee of Ways and Means have had under consideration House bill No. 90, entitled "A bill to authorize and direct the payment of certain moneys into the treasury of the State of California which were collected in the ports of said State as a revenue upon imports since the ratification of the treaty of peace between the United States and the republic of Mexico, and prior to the admission of said State into the Union," and having deliberated thereon, have come to the conclusion to report the bill back to the House, with a recommendation that it do not pass.

The first section of the bill provides, in substance, that the United States shall pay to California all the moneys collected in the ports now embraced in the limits of that State between the date of the exchange of ratifications of the treaty of Guadalupe Hidalgo, which was the 30th of May, 1848, and the day when the collector appointed under the act to extend the revenue laws of the United States over the territory and waters of Upper California, and to create a revenue district therein, entered upon the duties of his office, which was the 12th of November, 1849—excluding from said payment such moneys as have been judged to have been properly expended by virtue of the act entitled "An act for the relief of Brevet Brigadier General Bennett Riley, and to enable him to settle his accounts with the United States," approved February 5, 1853.

The second section provides, in substance, that the United States shall pay to California all moneys collected as revenue upon imports, in the same ports, from the said 12th of November, 1849, to the day on which California was admitted into the Union—excluding from said last mentioned payment the moneys which have been properly disbursed in collecting the same.

The third section provides, in substance, that the United States shall pay to California all moneys collected as hospital and light dues at the same ports during all the time embraced in the first two sections of the bill.

Your committee can see no ground, legal or equitable, on which the claim made by this bill, or any part of such claim, can be sustained.

The claim commences with the exchange of ratifications of the treaty of Guadalupe Hidalgo. By that treaty California was annexed to the United States, and became a part of the American Union, and the constitution of the United States was extended in full force over all that territory.

The treaty will be found in the 9th volume of the Statutes at Large, commencing at page 922.

The moneys mentioned in the first section of the bill, as near as your committee can ascertain, amount to about \$1,365,187<sup>1</sup>/<sub>2</sub>%. These moneys have generally been denominated in California "the civil fund."

The precise ground upon which the general government put the right to collect or receive these moneys are very clearly stated in a letter from H. W. Hallet, brevet Captain and Secretary of State of California, to E. H. Harrison, collector at San Francisco, under date of February 24, 1849. A copy of which letter is as follows:

STATE DEPARTMENT OF THE TERRITORY OF CALIFORNIA.

*Monterey, California, February 24, 1849.*

SIR: I am directed by Governor Mason to acknowledge the receipt of your letter of February the 9th, and to reply as follows to the questions proposed by you in relation to the collection of customs:

In the instructions just received from Washington, it is assumed that, by the treaty of peace with Mexico, California has become a part of the Union; that the constitution of the United States is extended over this Territory, and is in full force throughout its limits.

The position of California in her commercial relations, both with respect to foreign countries and to other parts of the Union, is therefore the same as that of any other portion of the territory of the United States. There, however, being, as yet, no collection districts established by Congress in California, no foreign dutiable goods can be introduced here.

Vessels having on board dutiable goods, which they wish to land in California, must enter them in some regular port of entry in the United States, and there pay the duties prescribed by law. Any such vessels presenting themselves in a port of California, without having so entered their dutiable goods, ought properly to be warned away, and refused admission; and when the goods are regularly entered at a regular custom-house, they can be brought here only in American bottoms. Such is the course required by a strict interpretation of the law; but as this would subject such vessels to great inconvenience and expense, the authorities having charge of this matter, have resolved to present to them the following alternative: *To pay here all duties and fees, and to execute all papers prescribed by the revenue laws of the United States, and upon their doing so their goods will be admitted; but without the execution of such papers, and the payment of such duties and fees, they cannot be allowed to enter or to land their cargoes; and any attempt to import into this Territory foreign dutiable goods, without the payment of duties, will subject them to all penalties of the law—both vessels and goods will be seized and sent for adjudication in the United States court established in Oregon.*

This view of the subject presents a ready reply to the questions propounded in your letter; no vessel can demand as a right to land any foreign dutiable goods here, and you will not be liable to prosecution for refusing such entry; and by a voluntary payment of her duties here, in preference to her going to a regularly established port of entry, such vessel binds herself to abide by the revenue laws of the United States in the absence of all instructions to the contrary. Your books and papers should be kept as far as possible in accordance with the regulations of the Treasury Department of the United States, transmitting your accounts to this office in the manner already directed.

Very respectfully, your obedient servant,

H. W. HALLECK,

*Brevet Captain and Secretary of State.*

E. H. HARRISON, Esq.,

*Collector, San Francisco.*

This letter is copied from executive document No. 17, of the House of Representatives, 31st Congress, first session, page 694-'5.

The moneys sought by the first section of the act under consideration were collected or received under instructions similar to those contained in this letter; these moneys were paid by the merchants and agents to the officers receiving them, in preference to entering the goods at a regular port of entry in the United States established by law; and in some instances the payments were made under protest, the persons paying insisting they had a right to land their goods free of duty or restraint at the ports in California.

From this statement of the case it would seem that the substantial right of the general government to these moneys is quite clear. Your committee think, however, it is wholly unnecessary to decide the question of absolute right on the part of the general government as between it and the State of California. It is a question properly between the general government and the merchants and importers who paid the duties: for, if the moneys were rightfully collected by our officers, the right both legally and equitably to retain them is quite as strong as it is to retain the moneys received for duties at Baltimore or New Orleans. Whilst, on the contrary, if they were wrongfully and unlawfully collected and received, they most obviously belong to the individuals who paid them, and not to the State of California.

This view of the matter has not been heretofore overlooked. By the last section of the act above referred to, entitled "an act for the relief of Brevet Brigadier General Bennett Riley, and to enable him to settle his accounts with the United States," (Statutes of 1853, chapter 58,) the Secretary of the Treasury is directed to cause proper defence to be made, at the expense of the United States, to any suit or suits then pending, or that might be instituted against the said Riley, for the moneys raised and collected by him in California, and to which said act was applicable. By far the greatest proportion of the "civil fund" so called, was collected in California, whilst General Riley was governor there, and the provision just cited has reference to such moneys so collected by him.

Before the death of General Riley, suits were commenced against



him by some of the persons who paid these moneys, or on whose count they were paid. These suits are predicated on the ground the law did not warrant or authorize him to collect or receive moneys. These suits are still pending and undetermined. If trial judgments are rendered against General Riley's representatives in these suits, the general government will then be bound to pay judgments and costs. If judgment shall be rendered in favor of General Riley's representatives, it will settle the question that the moneys were rightfully collected by the general government, and that California has no better claim to them than she has to moneys collected under revenue laws at any other port.

There is another fact which might be used with some force against the bill under consideration; and that is, that the civil fund was expended in California, in carrying on the government there, in bringing destitute overland emigrants thither, in paying the expenses of a convention which formed the State constitution, and in supporting military and naval operations on the Pacific; but it is deemed unnecessary to give the least weight to this consideration in disposing of the subject.

So much for the moneys sought to be reached by the first section of the bill.

#### SECOND SECTION.

Your committee are wholly unable to discover or appreciate any alleged reason for paying over to California the moneys mentioned in the second section of the bill. The second section refers to the moneys collected by the regular civil collectors of customs of the United States appointed under the act of March the third, 1849, (Statutes at large, volume 9, page 400,) which in due form extended all our revenue to and over California, and directed the collections made. The claim of California to these moneys your committee will not argue; certainly if there is any ground for this claim, there is the same ground for making Maryland and Massachusetts, or any other of the Atlantic States, the money collected for duties under the same laws, at their ports.

The amount of moneys sought to be reached by the second section has not been ascertained by the committee; it is the moneys collected for duties from the 12th of November, 1849, the day the first regular civil collector took possession of the collector's office at San Francisco to the 9th of September 1850, the day California was admitted into the Union as a State. Statutes at large, volume 9, page 452.

#### THIRD SECTION.

The moneys sought by the third section of the bill, being for "pilot and light dues," cannot be very considerable in amount, and in the opinion of the committee the claim of the State of California to them does not rest on any better foundation than its claim to the moneys mentioned in the first and second sections of the bill.

With a strong desire to do full justice to California, your committee have arrived at the conclusions above stated. They think the bill ought not to pass.

VESTER HUMPHREY AND THE HEIRS OF ALEXANDER HUMPHREY, DECEASED.

[To accompany bill H. R. No. 382.]

JUNE 10, 1854.

. LETCHER, from the Committee of Claims, made the following

REPORT.

*Committee of Claims, to whom were referred the memorial and accompanying papers of Alexander Humphrey and Sylvester Humphrey, asking relief, have had the same under consideration, and unanimously report:*

That on the 3d day of July, 1820, the memorialists contracted with the government (by David Gelston, collector of the port of New York) to repair a wharf at Staten Island, and also to build a new wharf at the same place, in "a workmanlike manner," and "of sufficient material"—the whole to be completed by the 10th day of June then next ensuing—for which they were to be paid the sum of \$13,499.

That said memorialists prosecuted the work with great energy, and effected the repairs of the old wharf agreeably to contract. On examination of the timber used in the construction of the old wharf, it was ascertained that hemlock timber with the bark on was in a good state of preservation, while timber with the bark off was in a great measure destroyed by the worms. When these facts were ascertained, the agent of the government prudently and judiciously determined to use hemlock timber with the bark on, in the construction of the new wharf. Such timber could not be procured in market, and the memorialists were compelled to seek it in the forest, cut it, and transport it to the place where it was to be used. Although not required by the contract to use timber of this description, they nevertheless fully complied with the request of the agent of the government, notwithstanding the considerable inconvenience to themselves, but with the express understanding that they were to be in no respect prejudiced in case of failure to complete the job within the time specified in the contract. It was satisfactorily shown that they prosecuted the work energetically and faithfully, and that it would have been completed in due time, but for the delay consequent upon this requirement of the government.

That after the timber required had been procured, put in place, well secured and secured, and when the wharf was only in part filled up with stone, the custom-house officers, under the direction of Major Sam Van Buren, received dockage, and allowed large ships and vessels of all sizes to be fastened to, and to remain alongside of the

said wharf. It is in evidence that the memorialists repeatedly protested against this action on the part of the custom-house officers, because they delayed them in filling up the wharf, and compelled them to unload the stone on the shore, and then carry them to the place of final deposit; and, also, because the wharf in its unfinished condition would be liable to be torn down, or at least seriously injured in case of storm.

In defiance of the protestations of the memorialists, the officers of government continued to allow the said wharf to be used in the manner hereinbefore stated, until the 3d day of September, 1821, when, by a severe storm, thirty vessels were driven upon and over the said wharf, and in consequence it was seriously injured. If the government officers had not permitted vessels to be fastened to it in its unfinished condition, the wharf would have been completed before that time, and it is satisfactorily shown that there was stone sufficient upon the shore to have filled it up. If the vessels had been kept out of the way, the stone would have been placed in the position they were intended to occupy as they were brought to the spot, and thus the wharf would have been saved from all injury in consequence of the storm. The said memorialists, notwithstanding, went on and completed the wharf within a short time after the injury aforesaid.

It also appears from the evidence in the papers filed, that the contract was taken at a low price. It was estimated, when the job was undertaken, that the wharf would settle about eight or ten feet; but it was ascertained that it settled and sunk about twenty feet. The expense was thereby greatly increased to the memorialists.

The evidence shows that their damages occasioned by the acts of government officers, as before stated, were not less than \$2,500.

A bill passed the Senate at each session of the 27th Congress making compensation to the memorialists for the loss they had sustained, but it was not acted upon in the House.

The committee believe that this loss should be borne by the government, as it was occasioned by the acts of its own agents and officers and without fault on the part of the memorialists. They accordingly report a bill for their relief, for the amount of the damages sustained by them.

A. B. ROMAN.

[To accompany bill H. R. No. 391.]

JUNE 10, 1854.

as, from the Committee on Private Land Claims, made the following

## REPORT.

*tee on Private Land Claims, to whom was referred the memorial Roman, having given to the same full consideration, beg leave to*

memorialist, A. B. Roman, is a resident of the parish of in the State of Louisiana. He has now in possession, and deemed himself the owner in fee simple of, a certain tract uated in the said parish, on the right bank of the Mississippi t sixty miles above the city of New Orleans, which measures en arpents six toises front upon the Mississippi river, and o the stream or bayou called *Icetamon*. A portion of said l, eighteen arpents front thereof, was purchased by him from ichael Cautrelli, and the remaining nine arpents six toises by him acquired from the estate of the late Onézima Ro- ad obtained the same from the said Michael Cautrelli.

of eighteen arpents front was acquired by the said Michael om the children and heirs of Nicholas Verret, and form a ract of twenty arpents front, which, on the 25th of June, granted by the French government to said Verret, *with all u could be found*, at the place called Caleaka Nossè, in said rret died in peaceable possession of this tract, as well as held by him under similar grants.

portion of the lands were originally held by Joseph Hebert ormié, under complete grants from the Spanish government, 73, by virtue of which grants they have, since that period, cultivated, sold, and occupied; the various parties to the ad occupants of the lands, relying upon the original grant, 73, as the basis of their titles.

se grants were made in good faith by the French and Span- ies having a right to make them, is very evident from the ced by the petitioner. They were recognised by the Span- nch authorities, and confirmed by actual undisputed posses- the time when the Louisiana territory was ceded to the tes. The evidence of the original grants is *complete* and records of the land office at New Orleans show that they

were minuted upon the registry of complete grants in that office, at the time of the cession. The United States, in its treaty with France for the cession of that territory, provided that its inhabitants should "be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

The lands above described were in the possession of Cantrelli, who was commandante of the parish of St. James at the date of the cession. They had been purchased by him of the original grantees, or their heirs, in good faith, and were by him sold in good faith—the one tract to A. B. Roman, the petitioner, and the other tract to Onézima Roman, through whom the petitioner claims title to the same as a purchaser.

Thus these titles remained at the date of the cession. After that date, the United States took steps to ascertain the number and extent of these grants, and by their law required a minute of the claims to be presented by the claimants, in order that the lands claimed might be surveyed, their boundaries ascertained, and an official record of the same preserved. Cantrelli, from whom the petitioner claims, when Congress prescribed these rules, was register at the land office at New Orleans, and, feeling a delicacy in confirming titles in which he had an immediate interest, postponed the acts necessary for their confirmation, intending to complete their registry and survey in a land office in an adjoining district. He died before completing his registry as intended, the lands descended to his heirs unconfirmed as required by the laws of Congress, and in this condition were sold to the Romans, as before stated, for a valuable consideration.

Various acts of Congress have been passed under which the petitioner might have perfected his title had he known of the defect in it; but as the lands came to him without that knowledge, and as they have been so many years in the undisturbed occupation of the parties heretofore named, Mr. Roman appears to have entertained no suspicion of his difficulties for a long period of time, and these various acts have expired by limitation. His attention having been called to the subject at a later day, however, he filed a petition in the United States district court, under the act of 17th of June, 1844, to quiet his title, and to procure a judicial recognition of his rights. His petition was dismissed, however, in the Supreme Court of the United States, on an appeal taken in behalf of the United States by the district attorney of Louisiana, on the ground that his claim was not of the class covered by the provisions of that statute. The ground of the dismissal was simply a want of jurisdiction; and so far as the title was drawn in question, it seemed to receive a recognition in the decision of the court. This decree of the court was made in 1849, and it left the petitioner without remedy, inasmuch as the courts had refused the jurisdiction of his cause, and the acts of Congress under which his titles should have been perfected were all dead.

In 1841, Congress granted to Louisiana 500,000 acres of land for internal improvements. Under an act of that State of March 26, 1842, the selecting agents of the State were prohibited from selecting and returning any lands for the benefit of the State covered by any pre-emption claim, or which had been in the uninterrupted possession of any person for the space of five years.

The lands of the petitioner above described were vacant on the books of the land office, for want of those acts necessary on the part of Cautrelli to perfect his title at the cession of the territory. No official registry of his claim had been made; no survey was on file; and notwithstanding they were in the occupation of the petitioner, and had been for many years, they were inadvertently returned to the General Land Office *vacant*, with the mass of other lands selected by the agents of the State, under the aforesaid act of Congress. An application made by petitioner, for a confirmation of his title, to the Commissioner of the General Land Office, was rejected by that officer for the want of power on his part—no survey and note of the tract having ever been made by the United States officers, as required by the laws of Congress.

And thus the matter stood until the 30th of July, 1850, when Mr. G. C. Laurason, at that date collector of customs at New Orleans, having ascertained the situation of Governor Roman's title, entered the lands described in the commencement of this report, at the State land office at New Orleans, and the sale having been reported to the General Land Office in this city, was confirmed, and the State authorities issued to Mr. Laurason a deed for said lands. But when the attention of the State authorities was called to the facts in the case, they promptly annulled the entry of Mr. Laurason, and directed him to return his deed for cancellation, as it had been procured in violation of the State law, and with a knowledge of the facts, on his part, which constituted the act a fraud as to him.

Your committee believe the original grants in this case to be *bona fide* grants, and that the faith of the government is pledged for their protection; that Congress had the right to take steps for regulating these titles, and to ascertain their extent, but that it could never take any step which would invalidate or annul them without a violation of public faith. As valid titles when the cession was made, the stipulation of the treaty of cession makes them valid now, and good for all time to come against the government. The petitioner has been for thirty years in actual possession, deriving title from those who had held them undisturbed for full thirty years or more before his title or right accrued. The petitioner has expended in improvements upon the said lands \$30,000, and paid for them a large consideration. Under these circumstances, your committee beg leave to report a bill for his relief.

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AN ACT to authorize the governor of the State to employ agents to locate the land granted to the State by the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands, and to grant pre-emption rights," approved fourth of September, eighteen hundred and forty-one.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the governor be, and he is hereby, authorized and directed to employ two or more agents, not to exceed five, to select and locate the land given to the State by the act of Congress entitled "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights," approved fourth September, eighteen hundred and forty-one: *Provided,* That

said agents shall not have the right to make any locations or selection under this act, of lands which may have been in the bona fide possession of any resident of this State for five years prior to the passage of said act, or to which such person shall have acquired a right under any of the pre-emption laws of the United States.

STATE OF LOUISIANA, *Office of the Secretary of State :*

I hereby certify the foregoing to be a true and faithful copy of the first section of the original act, No. 160, approved March 26, A. D. 1842, entitled "An act to authorize the governor of the State to employ agents to locate the land granted to the State by the act of Congress entitled 'An act to appropriate the proceeds of the sales of public lands and to grant pre-emption rights, approved March 4, 1841,'" deposited in my office.

Given under my hand and the seal of the State, at Baton Rouge, on this tenth day of May, A. D. eighteen hundred and fifty-two.

CHARLES GAYARRE, [L. s.]

*Secretary of State.*

EXECUTIVE OFFICE, *March 12, 1852.*

SIR : From the evidence which has been exhibited to me, it appears that the patent issued to you March 31, 1851, for fractional section 1 township 12, range 14 east, containing 57.22 acres, and section 4 township 13 south, range 16 east, for 365.28 acres, issued in error the selection and location thereof being upon land which was in the bona fide possession of Gov. A. B. Roman for five years previous to the passage of the act of Congress of 4th September, 1841, donating 500,000 acres of land for internal improvements to the State of Louisiana, and which, consequently, is in violation of, and conflicts with, the 1st section of the act of the legislature of this State, approved March 26, 1842 :

Now, therefore, you are hereby requested to return and surrender said patent to the office of the register of the State land office at Baton Rouge, to be cancelled and declared of no effect.

Your obedient servant,

JOSEPH WALKER.

GEORGE C. LAURASON, Esq.

LAND OFFICE, BATON ROUGE, LA.,

*March 12, 1852.*

SIR : Enclosed I hand you, by direction of his excellency Governor Walker, a copy of a letter this day sent to Geo. Carson Laurason, Esq. From it you will learn that, by act of the legislature approved March 26, 1842, selecting agents were not allowed to make locations upon any lands which had been held, bona fide, for five years previous to the passage of the act of Congress of 4th September, 1841, donating

500,000 acres of land to the State of Louisiana for internal improvements. It appears, from the evidence presented to Gov. Walker, that the lands located by Geo. C. Laurason, under State warrants Nos. 593, 644, 553 $\frac{3}{4}$ , were in possession of A. B. Roman, and had been held by him for a number of years, under Spanish grants, and therefore not liable to location by the State.

Very respectfully, your obedient servant,

W. H. CRENSHAW, *Register.*

Hon. J. BUTTERFIELD,

*Commissioner General Land Office, Washington city.*

**LAND OFFICE, Baton Rouge, La.:**

I certify the foregoing to be true and correct copies of letters on file in this office.

Given under my hand and seal of office, at Baton Rouge, this 10th of May, 1852.

[L. S.]

W. H. CRENSHAW, *Register.*











JACOB McLELLAN.

[To accompany bill H. R. No. 393.]

JUNE 10, 1854.

MR. T. WENTWORTH, from the Committee on Commerce, made the following

## REPORT.

*The Committee on Commerce, to whom was referred the petition of Jacob McLellan, praying for a remission of the penalty imposed upon the ship George Turner for an alleged violation of the laws restricting the number of passengers in merchant vessels, have had the same under consideration, and beg leave to submit the following report:*

From the evidence submitted by the petitioner and obtained from the custom-house at New York, it appears that said ship, being at the port of Havre, in October, 1851, was chartered of her captain, for and on account of her owners, for a gross sum, to take passengers from said port to New York, and that she sailed on said voyage on the 12th day of October aforesaid, with two hundred and twenty-four passengers. It is also in evidence that the space in said ship between decks available for passengers was 3,105 feet, together with a deck-house whose measurement was 28 feet—the latter not being occupied by passengers during the voyage. The space between decks allowed the ship to take on board, for the voyage from Havre to New York, two hundred and twenty-one passengers, with two additional for the deck-house, if it had been used for that purpose.

The first section of the sixteenth chapter of the laws passed in 1847 prescribes for such a voyage fourteen feet of deck for each passenger, and provides that no stores or other goods not being the personal luggage of the passengers shall occupy any of the space allotted to them. After the passengers had been engaged for the said ship, the captain caused a coal-bin, occupying forty-seven feet of the deck, to be made across the bows of the ship, between decks, to contain the coal for the use of the passengers, and also a latticed partition across the after part of the deck, for the purpose of storing behind the same the personal baggage of the passengers; and, in this state of the vessel, the voyage was successfully made, and the passengers were all landed at New York in good health, making no complaint of their accommodations or of the treatment or personal attention bestowed upon them.

After the discharge of the cargo and the landing of the passengers, the ship was seized by the collector of New York for a violation of the aforesaid law, and thereupon the owners petitioned the President for a

remission of the penalty alleged to have been incurred, who, upon the facts stated by the owners and the custom-house officers of New York, imposed upon the vessel a fine of twelve hundred dollars.

The petitioner asks for a remission of this fine upon two grounds: first, that there was no violation of law in the manner of making said voyage; second, that, if there was a violation of law, the same was unintentional on the part of the captain.

To sustain his first position, the petitioner alleges that the number of passengers on board the ship was two hundred and twenty-three; that the ship, including the deck-house, had a legal capacity for that number; and that the two partitions made between decks were for the accommodation of the passengers, and not in violation of the statute. The answer to these allegations is, that the return of the surveyor of New York shows the whole number of passengers to be two hundred and twenty-four; that the deck-house was not used for passengers, and there is no evidence that it was offered them for use. So far, then, it appears that the ship had three passengers more than the law allowed her to carry. The allegation that the erection of the "bin" in the forward part of the vessel was done to accommodate the passengers, by setting apart a place for their coal, does not relieve the case. The law expressly forbids any "stores or goods other than the personal luggage of the passengers" to occupy the space prescribed for them. The coal placed in the bin, although for the use of the passengers and located where it would best accommodate them, was not their "personal luggage." The designation of it most favorable to the petitioner would be that of passengers' stores, which are by law expressly excluded from the space allotted to the passengers. Upon an examination of the first section of the act referred to, it appears susceptible of no other construction than that every passenger should have and enjoy during the whole voyage, for himself and his personal luggage, in that part of the vessel assigned to passengers, fourteen superficial feet of deck, and that the captain or owners of the ship cannot appropriate for any other purpose any part of the space so set apart for the passengers' use, although it may be shown that such purpose was designed to and did accommodate the passengers. In this case forty-seven feet of the deck was used for purposes other than for the passengers and their personal luggage and such use was in violation of law. It may not have been an intentional violation; it may have been done in ignorance of the law; but the committee are of opinion that to allow such an excuse to avoid the operation and effect of a statute so express as the one referred to, under circumstances similar to those attending the present case, when an actual measurement of the ship had been made with reference to her taking passengers on her return voyage, when the law is so clear and definite in its terms, and when the duty of the captain in the premises could have been correctly ascertained either at the port of New York or on application to the consul at Havre, would be to work its practical repeal. It was the duty of the captain, if he doubted upon the construction of the law, to have ascertained his rights and duties under it; and if he neglected so to inform himself, the owners of the ship cannot set up the absence of an intention to violate a law to excuse a palpable breach of its plain enactments. Were the law under consideration on

of doubtful construction, or had the captain acted in conformity to legal advice in fixing upon the number of passengers and the arranging of their stores, the committee would have viewed this part of the case in a different light.

The petitioner further claims that the placing a latticed partition across the deck, in order to stow the baggage of the passengers in a particular quarter of the deck, was no violation of the law, and at all events no intentional violation of it.

The committee are of opinion that the arrangement of the baggage, in the manner stated in the proof, was as conducive to the health and convenience of the passengers as if the same had been suffered to lie scattered over the deck. It is not denied that this baggage was the personal luggage of the passengers, and, as such, was rightfully placed between decks; and, upon the whole evidence presented, the committee cannot agree that the peculiar arrangement adopted by the captain was a breach of the law, and they therefore determine that so much of the fine as was imposed on the said ship by reason of erecting the latticed partition and the stowing of the passengers' luggage behind the same, and which came into the treasury of the United States, should be remitted.

The amount of fine imposed by the President was.....	\$1,200
The amount of fine incurred, in the opinion of the committee, was .....	300
Leaving an overpayment of.....	900
Received by the officers of the customs at New York.....	450
In the treasury .....	450

For the refunding the last mentioned, a bill is herewith submitted.



**NATHANIEL GODDARD AND OTHERS.**

[To accompany bill H. R. No. 394.]

**JUNE 10, 1854.**

**Mr. T. WENTWORTH**, from the Committee on Commerce, made the following

**REPORT.**

*The Committee on Commerce, to whom was referred the petition of Nathaniel Goddard and others, praying for a remission of the forfeiture of the ship Ariadne and a return of the avails, so far as they have been received by the United States, respectfully report:*

That the committee have examined the claim of the petitioners, and reviewed the reports made thereon, and concur in the conclusions to which the Committee of Ways and Means, in a report made by Mr. Lowndes February 10, 1818, and the Committee of Claims, in a report made by Mr. Russell December 22, 1837, respectively arrived, and adopt said reports as a part of this report; and herewith present a bill for the petitioners' relief.

**JANUARY 6, 1846.**

*The Committee of Claims, to whom was referred the petition of Nathaniel Goddard and others, report:*

That the committee have examined the claim of the petition, and reviewed the reports made thereon, and concur in the conclusions to which the respective committees arrived, and adopt the report made on the 22d day of December, 1837, by the committee of the House of Representatives, as a part of this report; and herewith present a bill for the petitioners' relief.



DECEMBER 22, 1837.

Mr. RUSSELL, from the Committee of Claims, made the following report :

*The Committee of Claims, to whom was referred the petition of Nathaniel Goddard and others, owners of the ship Ariadne, and shippers of her cargo, praying a remission of the forfeiture and a return of the avails, so far as they have been realized by the United States, respectfully report:*

The petitioners state that they are American citizens, and were sole owners of the ship Ariadne and her cargo, which sailed from Alexandria, in the District of Columbia, in the month of September, 1812, with a cargo of flour, bound to Cadiz, a Spanish port; that on her direct voyage thither, and on the 15th October, 1812, she was captured by the United States brig-of-war Argus, and brought into the district of Pennsylvania, and there libelled in the district court by the captors as prize of war; that the *sole* cause of her capture and of her condemnation, as hereinafter mentioned, was, that she had on board, at the time of her capture, a British license, (see Appendix 1;) that the petitioners gave bonds, on the delivery of the vessel and cargo to them, in the usual form, and the Ariadne again proceeded on and performed her original voyage, and arrived at her port of destination in February, 1813; that the libel was heard and tried in the district court of the district of Pennsylvania, when, after a full hearing, the transaction was pronounced innocent, and the vessel and cargo ordered to be restored to the petitioners, and the captors to pay damages. From this decree the captors appealed to the circuit court, where the decree of the district court was reversed; and from this decree the petitioners appealed to the Supreme Court of the United States, where, at the term of that court in 1817, the decision of the circuit court was affirmed, and a final decree of condemnation passed on the vessel and cargo; whereupon, the petitioners and their sureties paid the amount of their bonds, to the end that distribution might be made to the United States and the captors according to law. That there was no suggestion or suspicion that the property belonged to the enemy, or of its having been shipped with intention of promoting his views or object; that the whole offence, if any there was, consisted in having said license on board said vessel; that they had no intention of violating any law of their country, nor did they know or believe that having on board said vessel said license was in violation of the law of the land, or any principle of public or private duty; that this opinion was entertained in common with other citizens, and particularly the most distinguished functionaries of the government, the then President and Attorney General of the United States; that, if they erred, it was unintentional, and the penalty of sequestration of their property was too severe an infliction for the violation of an unwritten rule of conduct, at that time never promulgated by the government or known to the citizen. While they concede that the law itself will admit of no justification for its violation, on the ground of ignorance of its existence, yet they contend that when a forfeiture has been inadvertently incurred, without involving the accused in any

on of moral obligation, it is no less an exercise of wisdom than to remit such forfeiture; and this, they contend, is their case. Testimony taken by the respective parties while the litigation progressed was very full, and from those most likely to possess information on the subject; which, with the petition, the ship's and other documents, have been referred to the committee, herewith submitted. Among other testimony is that of the master of the *Ariadne*, her supercargo, the consignees, and other special agents and individuals consulted with reference to the end objects of the original enterprise, with the correspondence thereto, the bills of lading, and the final account current rendered to the consignees at Cadiz to the owners, properly authenticated, among other things, the manner in which the cargo was packed, and to whom; also, the written opinions of distinguished persons, among whom was that of the then Attorney General of the United States, justifying, in a legal point of view, the use of the license obtained; also, the written communication of Henry Dennison, master of said *Ariadne*, after her capture by the *Argus*, in which he gives an account of the capture to the Secretary of the Navy. He says: "I was ordered to take charge of her, (the *Ariadne*), and to bring her into the first port I could make in the United States. On passage, I fell in with two British cruisers, viz: the sloop-of-war *Porpoise* and the brig *Calibre*, and was strictly examined by each; making use of the license and a little *finesse*, we escaped capture," (see Appendix 2.)

The documents are herewith submitted and made a part of this report, all which the committee have no hesitation in coming to the following conclusions:

That the petitioners were the owners of the ship *Ariadne*, and of her cargo on the voyage hereinbefore described.

That her true port of destination was Cadiz, in Spain, which is a neutral port.

That her cargo (which was of flour) was consigned to a mercantile firm in Cadiz, composed of native American citizens, with a *bono* of furnishing the inhabitants of that city with this necessary article of provision.

That she was captured by the American brig-of-war *Argus*, lawfully bonded, condemned, and the amount of the bonds paid in the full for the cause, and under the circumstances, hereinbefore

That the owners and shippers, before entering upon the enterprise, resorted to every reasonable precaution which prudence could suggest to ascertain the law of the land upon the question of their final destination. They consulted civilians of distinguished talent, learning, integrity, and were advised by all that it was not in violation of any law or commercial regulation, either of nations or the United States, for an American vessel, clearing from an American port to Spain, to have on board a license or passport of the description found on board the *Ariadne* at the time of her capture by the British.

That the voyage was undertaken *bona fide*, and without any in-

tention of aiding, abetting, comforting, or in any way or manner howsoever furthering the views or objects of the enemy, and without any design of violating any law or commercial regulation of the United States.

7th. That the distributive share of said prize to which the government was entitled has been duly received.

8th. That the artifice made use of by the prize-master, on the passage from the place of capture to the port of Pennsylvania, to avoid the capture of the *Ariadne* by the British sloop-of-war *Tartarus* and the British brig *Calibre*, prevented her capture by them, and should inure to the benefit of the owners of the ship *Ariadne* and her cargo.

When the committee also take into consideration that a considerable portion of the supplies of breadstuffs for Cadiz, during the siege of that city by the Spaniards, was obtained from the United States, transported in American vessels sailing from American ports destined for Cadiz, and, probably, after the declaration of war with Great Britain—all of them sailing under passports like that for which the *Ariadne* was condemned—and *that* without seizure or complaint; and that this vessel and her cargo *alone* was condemned for the *single* cause of sailing with *such* license, without regard to the object of the voyage or the port of destination; they think themselves called on, in the discharge of those high obligations which appertain to them and to the Congress of the United States, to recommend a remission of this forfeiture, and a return of the proceeds, as far as they have been realized by the United States.

At the time this enterprise was conceived, the whole peninsula was in a state of great political agitation; the regular and accustomed pursuits of the inhabitants were interrupted; military aspirants were struggling for domination; and the peaceful, robust, and industrious cultivators of the soil were subjected (under color of authority) to the most invidious, arbitrary, and oppressive exactions. Under these circumstances, the public mind there became excited; discontent and the most extreme apprehensions for personal safety prevailed; and a desire for a reform in the fundamental principles of the government became universal.

A knowledge of the free institutions of America animated their exertions and strengthened their hopes; and their predilection for liberal, if not republican principles, in many of the States, was openly avowed. And in Spain, particularly, after the treacherous imprisonment of their legitimate sovereign, indications of a reform, and an approximation towards that political toleration which laid the foundation of the free institutions of this republic, were avowed and witnessed with peculiar satisfaction by our citizens. Thus Cadiz, in the course of events, became a point of attraction. It was one of the most strongly fortified seaport towns in Spain; it was the headquarters of those who claimed to be patriots, who were in favor of reform, and who were struggling to sustain the constitutional government in the hands of the Cortes; possessing, too, a redundant population, cast there by the casualties which had involved their country in the multiplied horrors of civil war, numbering from two to three hundred thousand souls—more than double their usual population; and most of the agricultural districts and important towns in that country from which breadstuffs and other provis

s were usually obtained, were possessed by French troops. Thus, natural and usual source of supplies for this important town was atly diminished, if not entirely dried up. The city, too, having n for years closely besieged, by which all supplies by land were cut it was believed that this crowded population were suffering for provisions, the natural consequence of which would be, a ready sale and reasonable profits. Under these peculiar and afflicting circumstances, re were few, if any, who were Americans, who did not sympathise h the inhabitants of Cadiz and breathe the purest aspirations for ir comfort and deliverance.

The committee cannot but indulge the opinion, that, under such circumstances, it was rather an exercise of humanity than obnoxious to sure, to have furnished the inhabitants of Cadiz with the necessities of life. It is conceded that you cannot, with positive certainty, ascertain the *final* use of a cargo of this kind, and therefore, with absolute certainty declare that it *has entered* into the *civil* consumption of place of destination; yet, in consequence of that very impossibility, which must be so apparent to all, the well known and universally applied rule, which deduces the final *use* from the immediate *destination*, been established as furnishing *prima facie* evidence of the *use*. Thus, ere the articles were calculated for the ordinary use of life, articles human food, or for the use of mercantile ships, and immediately lined to a neutral port, they are circumstances which are received as ivalent proof to that of civil consumption, and cast upon the captors necessity of producing countervailing circumstances. This they may by producing evidence of the intention of the shippers to apply the go to military or naval use. Here, too, the difficulty of adducing imony to establish that *intent* will be perceived; but, by applying rule hereinbefore suggested, of deducing the intent from given facts, difficulty is overcome. Showing that the ship's papers present a port of destination, that the true port is blockaded by an enemy's adron, or is possessed by an enemy, are countervailing circumstances, show, with reasonable certainty, that the intent of the shippers it have been to apply the cargo to the military or naval use of the ay.

Applying this doctrine to the case under consideration, the committee rehend the opinion may reasonably be indulged that this enterprise undertaken for the purpose of relieving this superabundant population for a pecuniary equivalent; and that the intent of the shippers is, that the cargo should enter into the civil consumption of Cadiz. this view of the subject, the claim of the petitioners would seem to rit a favorable consideration; but the petitioners have been pronounced guilty of a violation of national law, or of a duty which they ed to their own government, by possessing themselves of this passport or license; and the effect of this condemnation is a confiscation of captured property, and the consequent transfer of a portion of the ills to the use of the public. And it is now submitted to Congress determine whether this penalty shall be exacted under the circumstances accompanying this case.

At the time this voyage was undertaken the *principle that sailing with license, protection, or passport* of this kind constituted in itself an act of

illegality, sufficient to subject the ship and cargo to confiscation as prize of war, *disregarding the object of the voyage and the port of destination, was not admitted, nor was it known to exist even to the government itself.* Were the petitioners, then, chargeable with a criminal design for being ignorant of that of which no one else possessed a knowledge?

The question for the consideration of the government now is, *not* whether this hitherto undefined national law "or duty to government" (of which, until the promulgation of the decision of the Supreme Court in this case, all were ignorant) has been violated, but whether it has been violated knowingly, intentionally, and wilfully, with a *design* to *évade* or violate it, and with the intention that this cargo should enter into the military or naval consumption or use of the enemy, and thereby further his views and objects.

The committee, after a careful examination of the voluminous documents, and the numerous facts which have been referred, and are herewith submitted, have come to the conclusion that the *idea* of an intentional violation or evasion of the law, in the conception or prosecution of the voyage in question, is entirely repelled.

In courts of criminal jurisdiction, when convictions have taken place for violations of municipal regulations, which involve no moral turpitude, and which have been the result of ignorance or inadvertence, unaccompanied with gross negligence, the moral sense and just expectations of the community have been met by reducing the punishment to that merely nominal, or remitting the fine, penalty, forfeiture, or disability altogether; and in most cases, if not all, when the intention to do wrong, which is a necessary ingredient of guilt, has been wanting, it has been the uniform practice of the executive department of this government to remit the condemnation: and the committee apprehend that the practice of the various departments of the government, in cases involving a principle of this kind, will not be disregarded. Uniformity in legislation is essential to the enjoyment of equal rights; and it is believed that the principle of the case now under consideration is not distinguishable from those referred to. When questions involving this principle have been submitted to Congress, (and the instances have been many,) on convictions for having violated the commercial regulations of the country, and it has been made to appear that the act complained of was done ignorantly, and without any *intention* of violating those regulations, or defrauding the government, the penalty, forfeiture, or disability has been uniformly remitted. In furtherance of this principle, the act of the 11th February, 1800, was passed by Congress, authorizing the Secretary of the Treasury, in certain cases, to remit fines, penalties, and forfeitures; and this identical case was submitted to Mr. Crawford, then Secretary of the Treasury, and his answer to Mr. Lowndes is herewith submitted, (see Appendix A,) showing that he would have remitted the forfeiture if it had been a case within his jurisdiction; and he proceeds to state that, "admitting the facts stated by the petitioner to be correct, (and they have not been controverted,) he does not appear to have incurred the penalty from which he asks to be relieved, by wilful negligence, or by any intention of fraud."

At a circuit court of the United States for the district of Massachusetts, held in the year 1816, the Swedish ship *Mercurius* and cargo

were condemned for a violation of the law of the United States, interdicting commercial intercourse between the United States and Great Britain and France and their dependencies; and on the 3d of March, 817, Mr. Madison, President of the United States, remitted all interest of the United States in the said condemnation or forfeiture, upon its having been made to appear that Christian Borden, the petitioner in that case, and the captain of the *Mercurius*, was not actuated by any 'fraudulent motives or wilful neglect' in the transaction which led to the said condemnation, but which was the result of ignorance on the part of the captain.

This case, in its essential features, strongly resembles the one under consideration; and, in carrying out in practice the principle of it, the committee are of opinion that the prayer of the petitioner ought to be granted. For the purpose of showing the great uniformity which has prevailed, and how ready Congress has always been to respect the motives of individuals charged with violations of the law, the committee submit the annexed schedule of laws passed on this subject. (See Appendix C.) These cases establish the principle that, when it was apparent that a forfeiture had been incurred without "wilful negligence or intention of fraud," it ought to be remitted or refunded.

It is a principle universally conceded that war gives a right to capture the goods of an enemy, but gives no right to capture the goods of a friend; yet a friend may place his goods in such a position as to form an exception to this rule, and render them liable to seizure and condemnation as prizes of war; and the Supreme Court have incorporated into the jurisprudence of our country *one* exception to this general rule, when they say that sailing with this license on board the *Ariadne* was sufficient cause for confiscating the cargo, without regard to the object of the voyage or the port of destination. Now, if the possession (without using) of this license was sufficient cause of confiscation, how much more reprehensible was the conduct of the prize-master, in using it as he did. By the artifice which he resorted to, and by misrepresenting the destiny of the vessel, he prevented her capture by the enemy. Applying, then, to this case the principle that a willing participant in the perpetration of an act of perfidy and fraud cannot, in equity and good conscience, be permitted to profit by it, and considering the government as identical with the prize-master, (and in theory at least it is so,) the question is, will it adopt a transaction which has been consummated in direct violation of truth? or will it distinguish between that sense of morality which demands from an individual an obedience to the obligations of truth, justice, and humanity, in his intercourse with others, and that which rests upon government? If they both are to be regarded as resting upon the same unyielding basis, to whose benefit shall this violation of truth above referred to inure? It cannot to the government, because it was a principal transgressor; and, from the peculiar situation of the enemy, he cannot avail himself of what otherwise would be his right. The property, then, would seem to remain to be possessed by some one who, in equity and good conscience, has a superior right. It once belonged to the petitioners, and still does, unless they have forfeited it; and, in the view herein taken, and by

analogy to the cases referred to, it is believed that no such forfeiture ought to be enforced.

Under these circumstances, the petitioners ask that so much of the avails as have been realized by the government may be returned to them.

It is a fact in proof, and was of general notoriety, that ships sailing at the period alluded to, from this country to a neutral port, were in the habit of procuring these licenses; and the use of them was considered not only innocent and lawful in the prosecution of such voyage, but a prudent precaution in trade, until after Congress passed a law prohibiting their use, which was on the 13th of August, 1813. And the fact is not unworthy of notice, that this law, from motives of policy, was repealed by Congress on the 3d of March, 1815. That these passports or licenses were in general use, was well known to the government; and the attention of Congress was called especially to the subject by the President of the United States. Under all these concurring circumstances, who would have hesitated in coming to the same conclusion which the petitioners say they did, that the use of this license or passport was not only lawful, but in every respect innocent?

Immediately after the final decree was pronounced, and the amount of the bonds paid, as hereinbefore stated, the petitioners presented their petition to Congress for relief; and in January, 1818, it was referred in the House of Representatives to the Committee of Ways and Means, and by them referred for information to the Secretary of the Treasury, Mr. Crawford, whose answer to the chairman of the committee was in favor of the application, and is hereinbefore referred to, and herewith submitted. On the 10th day of February, 1818, Mr. Lowndes, chairman of that committee, reported in favor of the application, and introduced a bill for the petitioners' relief, which failed to become a law. In 1824 the petition was again presented and referred; but no further action appears to have been had upon it.

With these views, and under the circumstances attending the case, the committee are of opinion that the distributive share which has been realized by the government ought to be paid over to the petitioners; to accomplish which, the committee ask leave to introduce a bill.

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## APPENDIX.

### No. 1.

#### OFFICE OF HIS BRITANNIC MAJESTY'S CONSUL.

I, Andrew Allen, junior, his Britannic Majesty's consul for the States of Massachusetts, New Hampshire, Rhode Island, and Connecticut, hereby certify that the annexed paper is a true copy of a letter addressed to me by Herbert Sawyer, esq., vice-admiral and commander-in-chief of the Halifax station.

Given under my hand and seal of office, at Boston, in the State of Massachusetts, this ninth day of September, A. D. one thousand [L. s.] eight hundred and twelve.

ANDREW ALLEN, Jr.

HIS MAJESTY'S SHIP CENTURION,  
*At Halifax, the 5th of August, 1812.*

SIR: I have fully considered that part of your letter of the 18th ult. which relates to the means of insuring a constant supply of flour and other dry provisions to Spain and Portugal, and to the West India islands, and being aware of the importance of the subject, concur in the propositions you have made.

I shall, therefore, give directions to the commanders of his Majesty's squadrons under my command not to molest American vessels so laden and unarmed, *bona fide* bound to Portuguese or Spanish ports, where papers shall be accompanied with a certified copy of this letter under the consular seal.

I have the honor to be, sir, your most obedient, humble servant,  
 H. SAWYER, *Vice Admiral.*

ANDREW ALLEN, Esq.,  
*British Consul, Boston.*

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*To the commanders of any of his Majesty's ships of war or private armed vessels belonging to subjects of his Majesty.*

Whereas, from a consideration of the great importance of continuing a regular supply of flour and other dry provisions to the ports of Spain and Portugal, it has been deemed expedient by his Majesty's government, that, notwithstanding the hostilities now existing between Great Britain and the United States of America, every protection and encouragement should be given to American vessels laden with flour and other dry provisions, and bound to the ports of Spain and Portugal: and whereas, in furtherance of these views of his Majesty's government, and for other purposes, Herbert Sawyer, esq., vice-admiral and commander-in-chief of his Majesty's squadron on the Halifax station, has directed to me a letter, under date of the 5th of August, 1812, (a copy whereof is hereunto annexed,) and wherein I am instructed to furnish a copy of his letter, under my consular seal, to every American vessel so laden and bound, either to any Portuguese or Spanish ports, and which is designed as a safeguard and protection to such vessel in the prosecution of such voyage: now, therefore, in pursuance of these instructions, I have granted unto the American ship *Ariadne*, Bartlett Holmes, master, burden three hundred and eighty-two and two ninety-fifths of a ton, now lying in the harbor of Alexandria, laden with flour, and bound to Cadiz or Lisbon, the annexed document, to avail only for a direct voyage to Cadiz or Lisbon, and back to the United States of America; requesting all officers commanding his Majesty's ships of war, or private armed vessels belonging to subjects of his Majesty, not only to suffer the said ship *Ariadne* to pass without any molestation, but also to extend to her all due assistance and protection in the prosecution of her voyage to Cadiz or Lisbon, and on her return thence, laden with such other merchandise to the net amount of her outward cargo, or in ballast only.

Given under my hand and seal of office, at Boston, this fifth day of [L. s.] September, A. D. eighteen hundred and twelve.

ANDREW ALLEN, Jr.,  
*His Majesty's Consul.*



PHILADELPHIA, November 11, 1812.

SIR: I have the honor to inform you that I arrived here last evening in the ship *Ariadne*, of Boston, cleared from Alexandria for Cadiz with a cargo of about 5,000 barrels of flour, but detained by the United States brig *Argus*, Captain Sinclair, for being under British license.

The *Argus* fell in with her on the 15th ultimo, in latitude 35 degrees 45 minutes, longitude 56 degrees 56 minutes; and, by boarding under British colors, obtained possession of her passport. I was ordered to take charge of her and bring her into the first port I could make in the United States.

On the passage I fell in with two British cruisers, viz: the sloop-of-war *Tartarus* and brig *Calibre*, and was strictly examined by each but, by making use of the license and a little finesse, we escaped capture. The *Tartarus* even put on board of us nine American seamen prisoners, to assist in working the ship.

All the papers found on board I have submitted to Mr. Dallas, district attorney, but as yet he has not given me any decided opinion relative to the case.

The *Argus* separated from the squadron on the 13th ultimo; and when I left her she had fallen in with nothing but the *Ariadne*.

I have the honor to be, most respectfully, sir, your obedient servant,  
HENRY DENNISON.

Hon. PAUL HAMILTON.

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A.

TREASURY DEPARTMENT,  
January 23, 1818.

SIR: I have the honor to acknowledge the receipt of your letter enclosing the petition of Nathaniel Goddard, and requesting to be informed—

1st. Whether the Executive authority is competent to grant the relief which the petitioner asks.

2d. If incompetent, whether the character of the case is such, that, under the principles upon which the remission of fines and penalties is ordinarily granted, the Executive government might not be expected to remit if it had the power.

To the first question I have the honor to state, that it has been determined by the Executive authority that relief cannot be granted, in this case, by the Executive department of the government.

In answering the second it is proper to state that the power of the Secretary of the Treasury to remit or mitigate fines, penalties, and disabilities, is confined to cases arising under the revenue laws, and those which concern the registering and licensing vessels of the United States; and, in those cases it must appear to his satisfaction that the penalty or disability has been incurred without wilful negligence or an intention of fraud.

The power of the President to grant reprieves and pardons extends to all offences against the United States, except in cases of impeachment. In the exercise of this power, greater latitude will necessarily be assumed, inasmuch as it is not limited, as in the power given to the Secretary of the Treasury, to cases which have occurred without wilful negligence or any intention of fraud.

It is therefore presumed that the Executive power of pardon, in all cases within its competency, will not only be exercised where the violation of law has not been the result of wilful negligence, or any intention of fraud, but in many cases where this entire innocence of intention cannot be pleaded.

Admitting the facts stated by the petitioner to be correct, (and they have not been controverted,) he does not appear to have incurred the penalty from which he asks to be relieved, by wilful negligence, or by any intention of fraud.

If the penalty incurred by the petitioner had been within the jurisdiction of the Secretary of the Treasury, and the facts stated in the petition had been legally established, the penalty would have been remitted upon the principles upon which remission has been ordinarily granted by the department.

I have the honor to be your most obedient and very humble servant,  
WM. H. CRAWFORD.

Hon. WILLIAM LOWNDES,  
*Chairman of the Committee of Ways and Means.*

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B.

LAW OPINION.

*Question.* Would a trade by American citizens, from a port of the United States to Lisbon, under the protection from British capture of such a British license as accompanies this paper, be a breach of any law of the United States?

We are not aware of any law of the United States which can be supposed to interdict to American citizens the trade above mentioned, either with or without such a license as has been shown to us.

It seems to be clear that, without such a license, our merchants have a perfect right to carry on their ordinary commerce between this country and Lisbon, so long as the local authorities of Portugal allow it. Lisbon is not a British port, possession, colony, or dependency. The armies of Great Britain are in Portugal as allies, not as conquerors. The native government remains, and we are at peace with that government. The ordinary American trade to Lisbon, therefore, cannot be affected by the act of Congress declaring war against the United Kingdom of Great Britain and Ireland; or by the act entitled "An act to prohibit American vessels from proceeding to or trading with the enemies of the United States, and for other purposes."

Then, as to the effect of the British license upon the trade in question, the only act of Congress which can be imagined to touch the point,

is the act last mentioned. By the first section of that act, an American vessel cannot clear out or depart from "any port or place within the United States, to any foreign port or place, till bond and security have been given that she shall not proceed to or trade with the enemies of the United States;" and the same act makes it penal to depart without giving such bond and security. This provision has nothing to do with this case, if we are correct in supposing that Lisbon is not a port of the enemies of the United States.

The second and third sections of the act relate merely to the transportation, by citizens of the United States, to the British provinces of Canada, Nova Scotia, and New Brunswick, of naval or military stores, arms or munitions of war, or provisions, from any place in the United States, and, consequently, have no bearing on this; and as to the fourth, fifth, and sixth sections, it is manifest that they have no sort of relation to it.

The seventh and last section is the only one that has reference to the sailing of American vessels under British license; and it will be seen upon the slightest inspection, that it wholly excludes the case under consideration. This section enacts that every person, being a citizen of the United States, or residing therein, who shall receive, accept, or obtain a license from the government of Great Britain, or any office thereof, for leave to carry any merchandise or send any vessel into any port or place within the dominions of Great Britain, or to trade with any such port or place, shall, on conviction for every such offence, forfeit a sum equal to twice the value," &c.

Lisbon is not a port or place within the dominions of Great Britain; and, of course, this section does not, in any manner, look to a trade with it.

There is no other act of Congress which even approaches this matter, and it would be ridiculous to apply to it the law of treason as defined by the constitution. To trade directly with an enemy, has never been supposed to be treason at the common law, or under the statute of the 25th Edward III; and it has only recently been settled in England to be a misdemeanor. Whether it could be held in this country to be even a misdemeanor, to be inferred from a state of war, by the aid of speculative considerations of expediency, may justly be doubted; but it is quite impossible that a trade with a neutral port should ever be held, on the mere ground that the enemy forbore to molest it. The single effect of the British license, on this occasion, is to place the commercial adventurer in a state of security against British capture on the high seas. It amounts to a waiver *pro hac vice* of the belligerent right of Great Britain to seize, as prize of war, American property embarked in commerce to which the license relates. How far it might be wise to forbid, by act of Congress, the use of such license by American merchants, we do not undertake to determine; but we feel confident that at present, it is not forbidden in any manner. We are further of opinion, that the license will not subject the property to capture as prize by American cruisers.

It may occasionally be a circumstance, among others, to produce

suspicion of a latent British interest; but it can have no other effect upon the question of prize or no prize.

JOHN PURVIANCE.  
WILLIAM PINKNEY.

BALTIMORE, *October 12, 1812.*

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C.

The following cases will show some of the instances in which Congress has remitted fines, forfeitures, and penalties, and the principle which has controlled in such remission; they not having fallen within the range of discretionary power given to the Secretary of the Treasury by the act of 3d March, 1797. This act, though limited in duration to two years, was afterwards made perpetual by the act of 11th February, 1800:

1809, June 28. All claim of the United States to any money arising from the sale of the ship *Clara*, sold in pursuance of a decree of the district court for Orleans district, be, and the same is hereby relinquished and remitted to Andrew Foster and John P. Geraud, late owners of said ship; anything in any former law to the contrary notwithstanding.—Laws U. S., vol. 4, page 237.

1814, March 31. The Secretary of the Treasury is authorized to remit the penalty incurred by Joseph W. Page, of Charleston, South Carolina, as surety in an embargo bond for Bernard Lafon.—Laws U. S., vol. 4, page 676.

1814, April 6. The fines, penalties, and forfeitures incurred by Jonathan Davis and others, who imported into Providence a cargo of merchandise from Havana, in 1813, are remitted.—Laws U. S., vol. 4, page 677.

1814, April 18. The penalty imposed on the owners of the schooner *Industry*, for illegally unloading merchandise at Edgartown, is remitted and refunded.—Laws U. S., vol. 4, page 707.

1817, March 3. Forfeitures incurred by Robert Burnside, for illegally importing goods from Liverpool into New Orleans, in 1811, remitted and refunded.—Laws U. S., vol. 6, page 182.

1818, April 20. Moneys received by the United States, in consequence of condemnation of ship *Edward*, refunded to Jonathan Amory and Thomas C. Amory.—Laws U. S., vol. 6, page 348.

1822, May 7. Forfeiture of property of Peter Cadwell and James Britten, imported into New York, and seized and sold for breach of law, remitted and refunded.—Laws U. S., vol. 7, page 66.

1824, May 17. Forfeiture of merchandise illegally imported by David Beard, remitted and refunded.—Laws U. S., vol. 7, page 249.

1824, May 24. Forfeiture incurred by J. Ottramare on four packages of jewelry, condemned in New Orleans, remitted and refunded.—Laws U. S., vol. 7, page 280.

1825, March 3. Amount received by United States on account of sales of sloop *Mary*, condemned for violation of law, remitted and refunded to Elisha Snow.—Laws U. S., vol. 7, page 355.

1626, March 20. Amount received by United States on account of sale of goods imported from Liverpool, in violation of law, remitted and refunded to J. Dickson & Co.—Laws U. S., vol. 7, page 501.

1628, May 24. Penalty incurred by Nathaniel Briggs, under act providing passports for ships, remitted.—Laws U. S., vol. 8, page 156.

1630, April 7. Penalty incurred by Thomas Sheverick, for not renewing license of his vessel, remitted and refunded.—Laws U. S., vol. 8, page 284.

1630, April 15. Proceeds of wine belonging to C. H. Hall, improperly condemned and sold, remitted and refunded.—Laws U. S., vol. 8, p. 285.

1630, April 24. Amount received for forfeiture of schooner Volante, condemned and sold, remitted and refunded to John Burton and others. Laws U. S., vol. 8, page 293.

1630, May 31. Amount received for sale of goods imported by David Beard, in violation of law, remitted and refunded.—Laws U. S., vol. 8, page 388.

1631, March 2. Amount received for sale of schooner Anna and her cargo, condemned for violation of revenue laws, remitted and refunded to Peters & Pond.—Laws U. S., vol. 8, page 433.

1633, March 2. Penalty imposed on Robert Eaton, for neglect to comply with a requirement of revenue laws, refunded.—Laws U. S., vol. 8, page 844.

1633, March 2. Amount received from sale of schooner Mary and cargo, condemned and sold, remitted to John Dauphin's heirs.—Laws U. S., vol. 8, page 860.

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AUGUST 8, 1846.



*The Committee of Claims, to whom was referred Senate bill No. 38, for the relief of Nathaniel Goddard and others, report :*

“The petitioners state,” in substance, says a former report from this committee, “that they are American citizens, and were sole owners of the ship *Ariadne* and her cargo, which sailed from Alexandria, in the District of Columbia, in the month of September, 1812, with a cargo of flour, bound to Cadiz, a Spanish port; that, on her direct voyage thither, and on the 15th October, 1812, she was captured by the United States brig of war *Argus*, and brought into the district of Pennsylvania, and there libelled in the district court by the captors as prize of war; that the sole cause of her capture and of her condemnation, as herein-after mentioned, was, that she had on board at the time of her capture, a British license; that the petitioners gave bonds, on the delivery of the vessel and cargo to them, in the usual form, and the *Ariadne* again proceeded on and performed her original voyage, and arrived at her port of destination in February, 1813; that the libel was heard and tried in the district court of the district of Pennsylvania, when, after a full hearing, the transaction was pronounced innocent, and the vessel and cargo ordered to be restored to the petitioners, and the captors to

pay damages. From this decree the captors appealed to the circuit court, where the decree of the district court was reversed; and from his decree the petitioners appealed to the Supreme Court of the United States, where, at the term of that court in 1817, the decision of the circuit court was affirmed, and a final decree of condemnation passed on the vessel and cargo; whereupon the petitioners and their sureties paid the amount of their bonds, to the end that distribution might be made to the United States and the captors according to law. That there was no suggestion or suspicion that the property belonged to the enemy, or of its having been shipped with intention of promoting his views or object; that the whole offence, if any there was, consisted in having said license on board said vessel; that they had no intention of violating any law of their country, nor did they know or believe that having on board said vessel said license was in violation of the law of the land, or any principle of public or private duty; that this opinion was entertained in common with other citizens, and particularly the most distinguished functionaries of the government, the then President and Attorney General of the United States; that, if they erred, it was unintentional, and the penalty of sequestration of their property was too severe an infliction for the violation of an unwritten rule of conduct, at that time never promulgated by the government or known to the citizen. While they concede that the law itself will admit of no justification for its violation, on the ground of ignorance of its existence, yet they contend that when a forfeiture has been inadvertently incurred, without involving the accused in any dereliction of moral obligation, it is no less an exercise of wisdom than of justice to remit such forfeiture; and this, they contend, is their case.

"The testimony taken by the respective parties while the litigation was in progress was very full, and from those most likely to possess correct information on the subject; which, with the petition, the ship's papers, and other documents, have been referred to the committee, and are herewith submitted. Among other testimony is that of the commander of the *Ariadne*, her supercargo, the consignees, and other confidential agents and individuals consulted with reference to the nature and objects of the original enterprise, with the correspondence relating thereto, the bills of lading, and the final account current rendered by the consignees at Cadiz to the owners, properly authenticated, showing, among other things, the manner in which the cargo was disposed of, and to whom; also, the written opinions of distinguished civilians, among whom was that of the then Attorney General of the United States, justifying, in a legal point of view, the use of the license complained of; also, the written communication of Henry Dennison, the prize-master of said *Ariadne*, after her capture by the *Argus*, in which, after giving an account of the capture to the Secretary of the Navy, he says: 'I was ordered to take charge of her (the *Ariadne*) and bring her into the first port I could make in the United States. On the passage I fell in with two British cruisers, viz: the sloop-of-war *Tartarus* and the brig *Calibre*, and was strictly examined by each, but, by *making use* of the license and a little *finesse*, we escaped capture,' " &c.

This case having been much litigated, it has been deemed best to state it in the language of a committee that was in favor of granting the

prayer of the petition, in order that an understanding of the merits of the claim may not be confused by disputes about facts. This has been done, and, to the same end, the *conclusions* of the favorable committee are here set forth, and the attention of the House is invited thereto:

"The committee have no hesitation in coming to the following conclusions:

"1st. That the petitioners were the owners of the ship *Ariadne*, and shippers of her cargo on the voyage hereinbefore described.

"2d. That her true port of destination was Cadiz, in Spain, which was then a neutral port.

"3d. That her cargo (which was flour) was consigned to a mercantile house in Cadiz, composed of native American citizens, with a *bona fide* intention of furnishing the inhabitants of that city with this necessary article of provision.

"4th. That she was captured by the American brig-of-war *Argus*, libelled, bonded, condemned, and the amount of the bonds paid, in the manner, for the cause, and under the circumstances, hereinbefore stated.

"5. That the owners and shippers, before entering upon the enterprise, resorted to every reasonable precaution which prudence could dictate, to ascertain the law of the land upon the question of their final condemnation. They consulted civilians of distinguished talent, learning, and integrity, and were advised by all that it was not in violation of any law or commercial regulation, either of nations or the United States, for an American vessel, clearing from an American port to Cadiz, in Spain, to have on board a license or passport of the description of that found on board the *Ariadne* at the time of her capture by the *Argus*.

"6th. That the voyage was undertaken *bona fide*, and without any intention of aiding, abetting, comforting, or in any way or manner howsoever furthering the views or objects of the enemy, and without any design of violating any law or commercial regulation of the United States.

"7th. That the distributive share of said prize, to which the government was entitled, has been duly received.

"8th. That the artifice made use of by the prize-master, on the passage from the place of capture to the port of Pennsylvania, to avoid the capture of the *Ariadne* by the British sloop-of-war *Tartarus*, and the British brig *Calibre*, prevented her capture by them, and should inure to the benefit of the owners of the ship *Ariadne* and her cargo.

"When the committee also take into consideration that a considerable portion of the supplies of breadstuffs for Cadiz, during the siege of that city by the Spaniards, was obtained from the United States, transported in American vessels, sailing from American ports destined for Cadiz, and probably after the declaration of war with Great Britain—all of them sailing under passports like that for which the *Ariadne* was condemned, and that without seizure or complaint—and that this vessel and her cargo alone were condemned for the single cause of sailing without such license, without regard to the object of the voyage or the port of destination, they think themselves called on, in the discharge of those high obligations which appertain to them and to the Congress of the United

tates, to recommend a remission of this forfeiture, and a return of the proceeds, as far as they have been realized by the United States."

From the preceding statements and conclusions, and from the report of Mr. Russell, (see Report No. 20, 1st session 26th Congress, H. R.,) and from the report made by Mr. Lowndes, February 10, 1818, (which, as it is not easy of obtainment, is annexed,) a full knowledge of the views of those who have favored the claim may be gained.

This case has been before the district, circuit, and supreme courts of the United States, and was elaborately argued by counsel distinguished for legal learning and ability. After a trial, the fairness of which has never been questioned, the case was decided for the petitioners in the district court, and against them in the circuit court. The decision of the circuit court was affirmed by the supreme court of the United States in 1817.

A brief notice of the points raised, and the opinion of the Supreme Court, will be found attached to this report.

This committee, after a careful and full investigation of the claim now under consideration, are of opinion that the decision of the Supreme Court of the United States is just, politic, and wise, and should be sustained by Congress. It is considered that a practical revision and a reversal of the decision in the case of the *Ariadne* are not called for by the dictates of justice nor of equity, and would be at this particular time to the last degree *impolitic*. It is admitted that the *Ariadne* sailed with an *enemy's* license on board.

In the case of "the *Ariadne*," (2 Wheaton, 143; 4 Cond. Rep., 70,) says Peters, in his Digest, vol. 2, p. 432, the Supreme Court held that "the sailing under the enemy's license constitutes, *of itself*, an act of illegality, which subjects the property to confiscation without regard to the object of the voyage or port of destination."

Can Congress, in a time of war, like the present, reverse this doctrine?

Again: In the case of "the *Hiram*," (1 Wheaton, 440; 3 Cond. Rep., 615,) the court held that "navigating under an enemy's license is *cause of condemnation*, and is closely connected with the offence of *trading with the enemy*: in both cases, the knowledge of the agent will affect the principal, although he may, in reality, be ignorant of the fact."—See 2 Peter's Digest, p. 431.

In the case of "the *Caledonian*," (4 Wheaton, 100; 4 Cond. Rep., 401,) the court held that, "by the general law of war, every American ship sailing under the pass or license of the enemy, or trading with the enemy, is deemed to be an enemy's ship, and forfeited as prize. If captured on the high seas by a commissioned vessel, the property may be condemned to the captors as enemy's property: if captured by an uncommissioned ship, the capture is still valid, and the property must be condemned to the United States."

Does justice, equity, or enlarged national policy, demand the reversal of these doctrines? Ought Congress, 34 years after the event, to relieve men, who have been apprehended in the act of navigating the ocean under the license of the enemy, from the penalties imposed by the courts in punishment of such offence?

It is also proper to remark, as illustrative of the *motive* of the British



in directing that "every *protection* and *encouragement* should be given to American vessels laden with flour and other dry provisions, and bound to the ports of Spain and Portugal," that Great Britain at that very time had large armies in both Spain and Portugal, under the command of the Duke of Wellington. The cheap supply of these troops with abundance of wholesome provisions evidently was the ruling motive of the British authorities, (not a parental regard for Nathaniel Goddard *et al.*,) which induced the granting of the license to the *Ariadne* to sail under British protection to the particular ports so carefully specified. The evidence of Joseph West, that had the *Ariadne* escaped the American man-of-war, and safely reached its port of destination, it so turns out that its flour would not have been wanted by the British forces, nor by their allies, does not affect the motive. When the license was granted and accepted, the British authorities and the owners of the *Ariadne* believed flour scarce and dear in Spain and Portugal, and hence the license was granted, and was accepted, in defiance of all consequences.

Judge Washington, in delivering the decision of the Supreme Court, says, when speaking upon this point :

"It is alleged that the flour was not actually destined to the use of the enemy ; but whether any part of it went to his use or not, is immaterial. It is, indeed, possible that Cadiz might have fallen, without the aid of these supplies ; and, therefore, in fact, Great Britain and her ally may have been relieved by these supplies from the pressure of the war in that quarter. The court, however, in the cases alluded to, proceeded on a broader ground. All the judges who concurred in those decisions were of opinion that the mere act of sailing under an enemy's license without regard to the object of the voyage or the port of destination constituted, of itself, an act of illegality which subjected the property to confiscation. It was an attempt by one individual of a belligerent country to clothe himself with a neutral character, by the license of the other belligerent, and thus to separate himself from the common character of his own country."

The Committee of Claims are decidedly of opinion that the petitioners ought not to be relieved from the penalties resulting from such wise and patriotic exposition of the law ; but, on the contrary, that the decision of the court ought to be fully sustained by the national legislature. The committee offer the following resolution :

*Resolved*, That the prayer of the petitioners ought not to be granted

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The <i>ARIADNE</i> , Goddard <i>et al.</i> ,	}	<i>Appeal from the circuit court for the district of Pennsylvania.</i>
claimants.		

This vessel, belonging to citizens of the United States, and laden with a cargo of flour, also belonging to citizens of the same, was captured on the 15th day of October, 1812, on a voyage from Baltimore to Cadiz, with a letter or license from the British Admiral Sawyer, intended as a protection from capture by British cruisers. The vessel and cargo were restored in the district court ; but, on appeal, sentence of condemnation was pronounced by the circuit court, from which sentence an appeal was entered to this court.

February 14.—*Sullivan*, for the appellants and claimants, offered to read further proof, taken under the standing rule of the court, (25th rule, February 7, 1816.)

*Woodward* and *Ingersoll*, for the captors, denied the authority of the rule under which the further proof was taken. They argued that the act of Congress did not provide for taking depositions to be used as further proof in prize causes, except where the course of prize practices authorizes it; that further proof is never admissible until the cause is heard on the original evidence.

[*Marshall, C. J.*, called on the claimants' counsel to show what facts the further proof tended to establish, and stated that, if the case could be distinguished from the former determination respecting licenses, a foundation would be laid for the admission of the depositions as further proof.]

*Webster*, for the appellants and claimants, contended that this case could be distinguished from those which had been decided.

In the case of the *Julia*, the court said: "We hold that the sailing on a voyage under the license and passport of protection of the enemy, in furtherance of his views or interests, constitutes such an act of illegality as subjects the ship and cargo to confiscation as prize of war; and that the facts of the present case afford irrefragable evidence of such an act of illegality." This proposition, as a doctrine of law, would be equally true, leaving out all that it contains relative to a license. A voyage prosecuted in furtherance of the enemy's interests is undoubtedly illegal, and it was on this illegality of the *voyage itself* that the judgment of the court proceeded. The court say they are satisfied, from the *facts*, that the voyage was illegal. In the case now before the court, the captors insist that the court shall shut out the *facts* connected with the voyage, and go merely on presumption. The *Julia* cannot be an authority for such a decision. The *Aurora* was decided expressly on the grounds which had been before stated in the *Julia*, and carries the doctrine no farther. In the case of the *Hiram*, no evidence was offered on the part of the claimants to repel the presumption arising from the license. That case, then, only decides that from the possession of the license the court may presume, until the contrary appears, that the voyage was in furtherance of the enemy's objects. In all these cases, the court seem to have rested their decision on the ground that the voyages in which the vessels were engaged were, of themselves, illegal voyages, undertaken and prosecuted for the enemy's interests; and that this illegality was shown by the *facts* which the cases disclosed. But they are not understood to have decided that they would hear no proof to make out the innocence of the voyage, notwithstanding the unfavorable inferences which might be drawn from the possession of the license. In the present case such proof was offered. The claimants were ready to show that the voyage originated in no intention to further, and, from its nature, could not further, the objects of the enemy. It was a voyage from Baltimore to Cadiz, with flour, at a time when neither the *British* nor the *Spanish* armies drew supplies from that city. They expected to prove it to have been, in all respects, as innocent as a voyage from Baltimore to Boston, with a similar cargo. Upon this application for permission to give proof, and until the court should hear

the proof, the only question would be, whether, in the most innocent voyage which could be imagined, the having of such a license is, *per se*, cause of confiscation, and cannot, in any case, by any evidence admit of explanation or excuse. On this point the claimants' counsel would wish to be heard, unless the court considers itself as having recently solemnly decided the precise question. They should contend that although the possession of such a license might create a presumption of unlawful trade, yet, like presumptions in other cases, it was capable of being repelled by proof; and that the judgment of the court must rest, after all, on the real nature and objects of the voyage, as disclosed by the facts connected with it, and not on the mere terms of the passport. In a case of this sort, the court would not incline to hold itself bound by former decisions, beyond their clear and manifest extent. No case appears to have gone so far as to prevent the court from hearing proof of the lawfulness of the voyage independent of the license, or to have decided that such proof, when full and satisfactory should not avoid confiscation.

Washington, J.—The view of the court is, that this case cannot be distinguished from those already decided. It is alleged that the flour was not actually destined to the use of the enemy; but whether an part of it went to his use or not is immaterial. It is, indeed, possible that Cadiz might have fallen without the aid of these supplies; and therefore, in fact, Great Britain and her ally may have been relieved by these supplies from the pressure of the war in that quarter. The court, however, in the cases alluded to, proceeded on a broader ground. All the judges who concurred in those decisions were of opinion that the mere act of sailing under an enemy's license, without regard to the object of the voyage or the port of destination, constituted, of itself, an act of illegality, which subjected the property to confiscation. It was an attempt by one individual of a belligerent country to clothe himself with a neutral character by the license of the other belligerent, and thus to separate himself from the common character of his own country. Sentence affirmed.

The preceding is a statement of the case of the *Ariadne*, determined at the last term of the Supreme Court of the United States.

HENRY WHEATON.

NEW YORK, April 5, 1817.

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*To the Commanders of any of his Majesty's ships of war or private armed vessels belonging to subjects of his Majesty.*

Whereas, from a consideration of the great importance of continuing a regular supply of flour and other dry provisions to the ports of Spain and Portugal, it has been deemed expedient by his Majesty's government that, notwithstanding the hostilities now existing between Great Britain and the United States of America, every protection and encouragement should be given to American vessels laden with flour and other dry provisions, and bound to the ports of Spain and Portugal; and whereas, in furtherance of these views of his Majesty's gover-

ent, and for other purposes, Herbert Sawyer, esq., vice-admiral and commander-in-chief of his Majesty's squadron on the Halifax station, is directed to me a letter, under date of the 5th of August, 1812, (a copy whereof is hereunto annexed,) and wherein I am instructed to furnish a copy of his letter, under my consular seal, to every American vessel so laden, and bound either to any Portuguese or Spanish ports, and which is designed as a safeguard and protection to such vessel in the prosecution of such voyage: Now, therefore, in pursuance of these instructions, I have granted unto the American ship Ariadne, Bartlett Holmes, master, burden three hundred and eighty-two tons and two ninety-fifths of a ton, now lying in the harbor of Alexandria, laden with war, and bound to Cadiz or Lisbon, the annexed document, to avail only for a direct voyage to Cadiz or Lisbon and back to the United States of America; requesting all officers commanding his Majesty's ships of war, or private armed vessels belonging to subjects of his Majesty, not only to suffer the said ship Ariadne to pass without any molestation, but also to extend to her all due assistance and protection in the prosecution of her voyage to Cadiz or Lisbon, and on her return thence, laden with such other merchandise to the net amount of her outward cargo, or in ballast only.

Given under my hand and seal of office, at Boston, this fifth day of [L. S.] September, A. D. eighteen hundred and twelve.

ANDREW ALLEN, JR.,

*His Majesty's Consul.*

*Joseph West's deposition.*

I, Joseph West, of Boston, in the State of Massachusetts, mariner, of lawful age, do on oath depose and say: That I arrived out at Cadiz in October, A. D. eighteen hundred and twelve, from said Boston, in the ship Factor, whereof I was then master, laden with a cargo of rice and flour; that, at the time of my arrival at Cadiz, there was a large supply of flour brought there in English vessels for the use of the British armies, as I understood, but, from the movements of the allied armies to the northward of Spain, was left in Cadiz for sale. Fifteen hundred barrels were on the mole for sale, and some, I know, were purchased by the inhabitants.

Large quantities of breadstuffs arrived there from the United States in October, November, and December, of the year eighteen hundred and twelve; but none of it was sold for the use of the English armies. It was commonly sold in lots for the use of the Spanish armies and the inhabitants of Cadiz and its vicinity; and if the Ariadne, Captain Holmes, master, had arrived out at Cadiz in October or November, eighteen hundred and twelve, her supercargo could have had no opportunity of selling her flour for the use of the British armies. I remained in Cadiz until May following, and no opportunity presented in all that time of selling any quantity of flour or breadstuffs for the use of the armies of Great Britain.

JOSEPH WEST.

STATE OF MASSACHUSETTS, ss.—*Boston.*

On this twenty-third day of January, in the year of our Lord one thousand eight hundred and sixteen, personally appeareth the above named deponent before me, the subscriber, one of the judges of the circuit court of common pleas for the middle circuit; and being by me carefully examined and cautioned, and sworn in due form of law to testify the whole truth, and nothing but the truth, relating to a certain admiralty cause, wherein Lieutenant Sinclair, his officers and crew, of the United States ship of war Argus, are libellants of the ship *Ariadne* and cargo, and Nathaniel Goddard and others are claimants, now depending before the Supreme Court of the United States, next to be holden at Washington, in the District of Columbia, on the first Monday of February next, he maketh oath to the deposition above written and subscribes the same in my presence; the said deposition being first reduced to writing by himself in my presence. Taken *de bene esse*, at the request of the said claimants, to be used in the cause aforesaid. The adverse party was not notified to be, and was not, present, the being and living more than one hundred miles from this place of caption, and no attorney for them or either of them being within that distance, in the knowledge of the subscriber. And the said deponent living more than one hundred miles from the said place of trial, is the cause of taking this deposition before me, I not being of counsel or a torney to either of the parties, or interested in the event of said cause.

WM. WETMORE.

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FEBRUARY 10, 1818.

*The Committee of Ways and Means, to whom was referred the petition of Goddard and others, formerly owners of the ship Ariadne and of her cargo, report:*

That the facts upon which the decision of Congress will probably depend in this case appear to be correctly stated in the petition, as confirmed by the documents which accompany it. The *Ariadne* and her cargo have been condemned as prize of war, on the ground of her having on board, at the time of her capture, a license which secured her from molestation by British cruisers on her voyage to Spain, after the declaration of war in 1812. The object of the petitioners is to procure the remission of the forfeiture which accrues to the United States.

It seems very certain that the exposure to condemnation, on the principles of national law, of a merchant vessel which employed an enemy's license or passport, was not generally admitted by our professors of law, nor known by the legislature when the voyage in question was undertaken. Under such circumstances, the petitioners urge that their error was unintentional and their ignorance venial.

They observe that, subsequent to the capture of the *Ariadne*, an act prohibiting the use of these licenses was proposed in Congress and rejected; and they might add, that this rejection could not have resulted from an opinion that the trade was unlawful, without a new express

legislative will, because Congress had provided for the case of much more clearly illegal, under an enemy's license, to an port. Where the executive department of the government power to remit a forfeiture, it constitutes, in the opinion of the ee, in ordinary cases, an objection to legislative interference; could be hard to apply this principle to a case in which (as is in the letter of the Secretary of the Treasury which accompanied report) "it has been determined by the executive authority ef cannot be granted by the executive department." The Sec- idds, in the same letter, that if the penalty had been within idiction of the Secretary of the Trcasury, it would have been , upon proof of the facts stated in the petition, upon the prin- pon which remission has been ordinarily granted by the de- t."

ommittee report a bill for the relief of the petitioners.



**CHARLES J. DAVIS, ADMINISTRATOR.**

[To accompany bill H. R. No. 396.]

**JUNE 10, 1854.**

Mr. DRUM, from the Committee on Revolutionary Claims, made the following

**REPORT:**

*The Committee on Revolutionary Claims, to whom was referred the petition of Charles J. Davis, administrator of Captain John Davis, an officer of the Revolution, report:*

That the facts of the case are correctly stated in the report of Mr. Butler submitted at the 1st Session of the 31st Congress, and which is adopted by this committee. A bill for the relief of the petitioner is herewith presented.

**JULY 25, 1850.**

*The Committee on Revolutionary Claims, to whom was referred the petition of Charles J. Davis, administrator of Captain John Davis, an officer of the Revolution, report:*

That the petitioner claims, in right of Captain John Davis, the commutation and bounty land promised to certain officers of the army of the Revolution who should serve to the end of the war. The proof in support of the claim is as follows: The original commission is produced, dated at Philadelphia, the 10th day of April, 1779, signed by John Jay, president of Congress, constituting John Davis a captain in the ninth Pennsylvania regiment in the army of the United States, to take rank as such from the 15th day of November, A. D. 1776. The oath of allegiance to the United States, sworn to by Captain John Davis, of the ninth Pennsylvania regiment, before Major General Lord Sterling, at Valley Forge, the 28th May, 1778, is also exhibited.

The remains of a journal kept by Captain Davis shows his active services during the war. Some portion of it is evidently torn off, and the first date that remains is January 4, 1778. The last date seems to have been made in South Carolina, January 11, 1782. Captain Davis was also a member of the Cincinnati Society, as appears from his diploma dated 31st October, 1785. This is not conclusive that he served to the end of the war, as by the constitution of that society three



years' service and an honorable discharge, as well as service to the end of the war, entitled officers to membership. There is no proof, however, which, in addition to the facts above stated, is entirely satisfactory to the committee that Captain Davis continued in the service until the end of the war, particularly as there is no evidence among the public records or otherwise that he ever resigned his commission, or was discharged until the army was finally disbanded at the peace.

There is no evidence that Captain Davis ever applied for or received his commutation or bounty land. He was a highly respectable man and his pecuniary circumstances were such as not to make it necessary for him to avail himself of the provisions made by his country for those who, like himself, had served her in her hour of need; and with a patriotic feeling of independence he abstained from making the claim during his lifetime. He had married a daughter of John Morton, one of the signers of the declaration of independence, and was for many years an associate judge of the courts in Chester county, Pennsylvania. After his death, which took place about the 1st of September, 1783, his family became reduced in their pecuniary condition, and now is justified in calling for what is justly due from the government. The committee, upon a careful examination of the subject, find that this case is brought within the resolves of Congress granting commutation and bounty land. The committee report a bill accordingly.

JOHN C. FR. SALOMON.

JUNE 10, 1854.—Laid upon the table and ordered to be printed.

Mr. J. G. DAVIS, from the Committee for the District of Columbia, made the following

REPORT.

*The Committee for the District of Columbia, to whom was referred the memorial of John C. Fr. Salomon, describing a project devised by himself for supplying Washington with water, and asking for a charter for an incorporated company, with a capital of \$1,000,000, for the purpose of constructing water-works upon the plan set forth in his memorial and the accompanying papers, respectfully report:*

That in their opinion it is inexpedient to grant the request of the memorialist, for the following reasons:

An appropriation of five thousand dollars was made at the session of 1851 and '52, to enable the President to cause surveys, plans, and estimates to be made to determine the best means of affording to Washington and Georgetown an unfailing and abundant supply of good and wholesome water. The late President, Mr. Fillmore, caused surveys to be made of all the sources from which it was supposed that the supply could be advantageously drawn, and a report and map showing the results of these surveys, plans, and estimates, was prepared under his direction. The report and estimates were published at the last session and laid before Congress. This report set forth the modes of supply—one from Rock creek, at an estimated cost of \$1,258,863; one from the Little Falls, at a cost of \$1,622,215; and one from the Great Falls, by a conduit of brick, proposing to supply 36,015,400 gallons daily, at a cost of \$1,921,244, and suggesting that a conduit of two feet greater diameter would furnish a supply of 67,596,400 gallons.

The advantages and disadvantages of the several projects are very fully set forth in that report, which has been in the hands of every member of Congress, and it is not necessary to recapitulate them here.

After this report was printed and laid upon their tables, Congress appropriated \$100,000 to commence the work, and by express provision of law committed the decision between the various plans to the President; the money being appropriated to bring the water into Washington upon such plan as the President might adopt.

President Pierce, with full knowledge in the premises, has fulfilled the duty thus imposed upon him by Congress, and has decided to direct the construction of an aqueduct from the Great Falls. He says in his

JOSHUA SHAW AND OTHERS.

JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

Mr. PARKER, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom was referred the petition of Joshua Shaw and twenty-two others, citizens of the State of Ohio, praying for a change in the present system of surveying the public lands, have had that matter under consideration, and now report:*

That prior to the year 1805, the lands north of the Ohio river were divided by running townships off into blocks two miles square, and marking the middle, or mile-points, in each line of these squares, so that section entries might be made.

By virtue of an act of Congress, approved February 11, 1805, it was provided that these sections be run out, by marking lines through said one-mile blocks, from each of said mile-points to the opposite, and by marking the middle or half-mile points, in each section line, establishing said points as nearly equidistant from the section corners as possible, so that quarter section entries might be made.

The lines and corners thus marked, and the contents of the several divisions thus created, being returned by the surveyor general, it is declared shall be deemed and taken as the true and proper lines and corners, and each tract as having the exact quantity of land expressed be return as being the contents thereof.

Under this system of surveys, the lands in the northwest have been bought or entered, settled and improved. And in proportion as the lands have been improved and become valuable, the fact has become remarkable and a subject of remark, that the lines run and marked by government are not always exactly straight, as they were intended supposed to have been, and that the corners intended to have been in the middle of the section-lines are not always in the exact middle. Hence it often happens that persons owning quarters in the same section find, upon a resurvey, a deficiency of several acres in one quarter, a surplus in others.

The petitioners pray, inasmuch as each purchaser pays the same amount of money for his quarter of land, be it a large or small one, therefore that said act be so amended as to authorize section lines, upon resurvey by the owners, to be made mathematically straight, and the establishment of the half-mile stakes mathematically equidistant from section corners.

annual message at the commencement of the present session of Congress:

"Under the acts of Congress of August 31, 1852, and of March 3, 1853, designed to secure for the cities of Washington and Georgetown an abundant supply of good and wholesome water, it became my duty to examine the report and plans of the engineer who had charge of the surveys under the act first named. The best, if not the only plan calculated to secure permanently the object sought, was that which contemplates taking the water from the Great Falls of the Potomac, and consequently I gave it my approval."

The President having thus, in discharge of the duties imposed upon him by Congress, made his decision, and adopted the plan as above set forth, and caused the said appropriation of one hundred thousand dollars to be expended in prosecuting the same, and no proposition of any kind having been referred to your committee, looking to or suggesting an abandonment of the plan adopted by the President, or any change, alteration, or modification thereof, they do not feel authorized to assume the responsibility of recommending an abandonment of the plan adopted by the President, and the substitution of the one proposed by Professor Salomon.

Your committee, therefore, report that it is inexpedient to grant the prayer of the memorialist, and ask to be discharged from the further consideration of the same.

JOSHUA SHAW AND OTHERS.

JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

SEN. from the Committee on the Judiciary, made the following

REPORT.

*Committee on the Judiciary, to whom was referred the petition of Joshua and twenty-two others, citizens of the State of Ohio, praying for change in the present system of surveying the public lands, have had the matter under consideration, and now report:*

prior to the year 1805, the lands north of the Ohio river were surveyed by running townships off into blocks two miles square, and in the middle, or mile-points, in each line of these squares, so that section entries might be made.

Under the act of Congress, approved February 11, 1805, it was provided that these sections be run out, by marking lines through said blocks, from each of said mile-points to the opposite, and by the middle or half-mile points, in each section line, establish points as nearly equidistant from the section corners as possible, so that quarter section entries might be made.

Since the lines and corners thus marked, and the contents of the several sections thus created, being returned by the surveyor general, it is now held that they shall be deemed and taken as the true and proper lines and boundaries, and each tract as having the exact quantity of land expressed upon the return as being the contents thereof.

Under this system of surveys, the lands in the northwest have been more or less entered, settled and improved. And in proportion as they have been improved and become valuable, the fact has become more and more a subject of remark, that the lines run and marked by the government are not always exactly straight, as they were intended to have been, and that the corners intended to have been in the middle of the section-lines are not always in the exact middle. It often happens that persons owning quarters in the same section, upon a resurvey, a deficiency of several acres in one quarter, plus in others.

Petitioners pray, inasmuch as each purchaser pays the same price of money for his quarter of land, be it a large or small one, that said act be so amended as to authorize section lines, upon application by the owners, to be made mathematically straight, and the placement of the half-mile stakes mathematically equidistant from the section corners.

Your committee are not unmindful of the fact that the evil indicated by the petitioners has been the source of much restiveness and complaint by western landholders; and that it has also been the source of much litigation amongst them. Yet they are constrained to regard the remedy sought as wholly inadmissible; and not only so, but that the evil, such as it is, is without remedy.

It is a rare thing that different surveyors of the same tract of land correspond precisely in their metes and bounds. This is more particularly the case in a new country of timber land. The reasons why these discrepancies and inaccuracies will and must exist, will readily occur to the reflecting. Hence it will just as readily appear that the remedy sought, of new lines and new corners, instead of being a remedy will aggravate the evil and make it interminable; for the resurvey by different surveyors, with different instruments, at different seasons and under divers other differing circumstances, would make the resurveys interminable. Hence the committee can conceive of no practicable good that would result in making even the original surveys hereafter to take place, subject to the provision of resurvey petitioned for in reference to lands already surveyed and purchased under the existing law.

But should the change prayed for be granted, the ground upon which it would be granted would require the amendment to go further and be made, in like manner, applicable to the ranges, townships and sections, for the same inaccuracies and discrepancies in quantities of land are found in them, as in the lesser divisions of quarter-sections. Thus done, all the ancient landmarks of the country so surveyed would be unsettled and involved in endless confusion, than which, hardly as another evil of greater magnitude could be entailed upon the people.

But, in so far as the object immediately aimed at by the petition is concerned—that is to say, the granting of authority to straighten the lines and re-establish the corners originally run and fixed by the government, as aid for the perpetual lines and corners of the land bought peradventure, and now held by them, with direct reference to the lines and corners—the matter is deemed impossible, without a violation of the fundamental law of the land.

The law has fixed the rights of all these owners agreeably to the lines and corners, however crooked the former or inaccurate the latter by a law older than their titles; and it is now, therefore, clearly incompetent for the law-making power to unsettle the rights so fixed and vested—take the land that the law placed in one man's field and place it in the adjacent field of his neighbor. This, then, is an end of the matter, and the report must be adverse to the prayer of the petition.

The committee, however, would not close their report without making a further suggestion. It has already been remarked, that the evil question has been a somewhat prolific source of restiveness and trouble among the northwestern landholders. But it is deemed that this should not be so, and cannot be, with those who will give the subject a little quiet reflection.

When the pioneer has penetrated the wilderness of the west to the region he fancies, and has squatted upon or entered his favorite quarter he never inquires or examines whether it be a large or a small quarter.

es not even think of it then. Other questions absorb his mind. are: How does the land lie? How is it timbered? How is it ed? How many acres of fat bottom are there? or, how much ber and how much of prairie?

ould the evil now under consideration enter his mind, and had he ilities that the improved country some two scores of years after- would afford him, of procuring a surveyor, chainmen and axe- of notifying others interested, of running the lines and planting monu- l corners, he would not think of doing, or even being at his ratable tion of the expense of doing it; for he pays but \$1 25, or perhaps : acre for his land; and should he get a few more acres by making ey, his neighbor would lose them, and, at best, all gained would y expenses.

time passes. Improvements that he never dreamed of seeing in his day, or of appearing in the day of his children's children, n around him. Each acre of the pioneer's land is *now* worth y-five, or fifty, perhaps one hundred dollars; not because it pro- better than when he first opened and fenced it, but because of gnal blessings that the benign institutions of his country have red there. Then it is that the potent instinct of *meum* and *tuum* comes sess him, if ever, like an evil spirit. Now, if he would charm this away, he has only to call up the grateful reflections that he got his and holds it, under a system more perfect than any other ever 1; that no claim can be set up counter to his; no location over- shingle his; that those lines and those corners which he found in tamed wilderness were marked and established by the power of , people to identify *his* land. Thus reflecting, he will be careful, elight to preserve and secure those ancient landmarks of his farm d the reach of controversy; and would not change them if he . He will then look back over the history of his home, and with rt at ease, or smiling with gratitude, say to himself: "*The lines indeed fullen to me in pleasant places, and I have a goodly heritage.*"





APT. TARPLEY WHITE.—LEGAL REPRESENTATIVES OF.

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JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

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Mr. DRUM, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Tarpley White, deceased, have had the same under consideration, and report:*

That the present application has been frequently before committees of Congress; and your committee beg leave to refer to a report made in the said case by the Committee on Revolutionary Claims on the 1st of April, 1842, which contains a full statement of all the facts and evidence furnished. Your committee, after a full examination, entirely concur in the conclusion stated in that report, and recommend that the claim be rejected.

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APRIL 1, 1842.

*The Committee on Revolutionary Claims, to whom was referred the petition of the representatives of Tarpley White, submit the following report:*

At the first session of the last Congress a report on this petition was made from the Committee on Revolutionary Claims, by Mr. Craig, its chairman, as follows:

“That several favorable reports, accompanied each by a bill allowing commutation pay to the legal representatives of Captain Tarpley White, late of the continental line of the army of the Revolution, have been made at different sessions of Congress. The last one, made on the 21st of December, 1838, is submitted as part of the report of this committee. It is as follows:

The Committee on Revolutionary Claims, to whom was referred the petition of Israel White, legal representative of the late Captain Tarpley White, and of Lieutenant John White, have had the same under their consideration, and report:

‘That by the deposition of Rowley White, and that of Samuel Tinsley, (the latter of whom was an officer in the army of the Revolution,)

it appears that the said Tarpley White was a captain in the army the Revolution.

'The certificate of the register of the land office in Virginia shews that, on the 15th of July, 1783, a military bounty land warrant for 1 thousand acres, and on the 1st of June, 1805, two other such warrants for three hundred and thirty-three and one-third acres each, were issued by the State of Virginia to Tarpley White, for seven years' services as a captain in the Virginia continental line.

'The certificate of the auditor of public accounts in Virginia, also in the case, shows that, upon the settlement of accounts, made in pursuance of the act of the General Assembly of Virginia, passed at November session, in the year 1781, a certificate issued, on the 13th March, 1783, in the name of Tarpley White, as a captain of infantry for £352 18s. 6d., for services continuing down to the 15th of February 1781.

'In addition to this evidence, the certificate of General Robert Portfield, who was a captain in the war of the Revolution, proves that Tarpley White served in that war, as a captain, in the campaign 1780 and 1781.

'Under this view of the case, your committee cannot hesitate in opinion that Tarpley White was a captain in the army of the Revolution on continental establishment; and nothing appearing to induce suspicion that he resigned, or otherwise divested himself of his title, his commutation pay, they have come to the conclusion that he is entitled to it, and accordingly report a bill.'

"Since the commencement of the present session of Congress, and of course, since the foregoing report was made, it has been discovered by the committee that the name of Captain Tarpley White was wholly omitted in what has been commonly called the Chesterfield arrangement—an arrangement of the Virginia continental line, which took place in the beginning of the year 1781, at Chesterfield, in Virginia. The records of the proceedings of the board of officers who conducted the arrangement make no mention whatsoever of the name of Captain Tarpley White. The committee are, therefore, strongly persuaded that he resigned his commission, probably on the 15th of February, 1781, and appears to have received his pay as an officer in the continental army up to that time, under the act of the November session of the Virginia legislature of 1781, and does not appear to have been in the service afterward.

"The committee cannot otherwise account for the total omission of the name of Tarpley White, in the proceedings of the aforesaid board, by supposing he resigned his commission at some period of time prior to the termination of their duties. If he had been retained in the service, his name would have appeared on the new roll of officers reported out by that board. If he had been excluded as a supernumerary or superseded officer, he would have been noted as such; for that he did make out, and record among their proceedings, a list of supernumerary and superseded officers, and Tarpley White's name is wholly omitted."

In addition to the facts stated in the foregoing report, it may be observed that Captain White, whose term of service ended February 15, 1781, while the board of arrangements, under the resolutions of October 1, 1781, was sitting, could not possibly have become supernumerary under that arrangement, because the number of captains was *increased*, not *diminished*, at that arrangement. From September, 1778, to February, 1781, the Virginia line consisted of eleven regiments of infantry, with six captains to each regiment, making sixty-six captains in the whole. (See resolutions of May 27, 1778, and March 9, 1779.) By the arrangement made in February, 1781, the line was reduced to eight regiments, but there were nine captains to each regiment, or seventy-two in the whole. (See resolutions of October 21, 1780.) That the number of captains was thus increased appears also from copies of the arrangements in possession of the committee. As there was an increase of six captains, there could, of course, have been none left out as supernumerary.

The committee concur with the committee of the last Congress that the claim ought to be rejected.

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JUNE 23, 1840.

*The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Tarpley White, deceased, have had the same under consideration, and report:*

That several favorable reports, accompanied each by a bill allowing commutation pay to the legal representatives of Captain Tarpley White, late of the continental line of the army of the Revolution, have been made at different sessions of Congress. The last one, made on the 21st of December, 1838, is submitted as part of the report of this committee. It is as follows:

"The Committee on Revolutionary Claims, to whom was referred the petition of Israel White, legal representative of the late Captain Tarpley White, and of Lieutenant John White, have had the same under their consideration, and report:

"That, by the deposition of Rowley White, and that of Samuel Tinsley (the latter of whom was an officer in the army of the Revolution) it appears that the said Tarpley White was a Captain in the army of the Revolution.

"The certificate of the register of the land office in Virginia shows that, on the 15th of July, 1783, a military bounty land warrant for four thousand acres, and on the first of June, 1805, two other such warrants for three hundred and thirty-three and one third-acres each, were issued by the State of Virginia to Tarpley White, for seven years' services as a captain in the Virginia continental line.

"The certificate of the auditor of public accounts in Virginia, also filed in the case, shows that, upon the settlement of accounts made in

pursuance of the act of the General Assembly of Virginia, passed at its November session, in the year 1781, a certificate issued, on the 13th of March, 1783, in the name of Tarpley White, as a captain of infantry, for £362 18s. 6d. for services continuing down to the 15th of February, 1781.

"In addition to this evidence, the certificate of General Robert Porterfield, who was a captain in the war of the Revolution, proves that Tarpley White served in that war, as a captain, in the campaigns of 1780 and 1781.

"Under this view of the case, your committee cannot hesitate in the opinion that Tarpley White was a captain in the army of the Revolution on continental establishment; and nothing appearing to induce a suspicion that he resigned, or otherwise divested himself of his title to his commutation pay, they have come to the conclusion that he was entitled to it; and accordingly report a bill."

Since the commencement of the present session of Congress, and, of course, since the foregoing report was made, it has been discovered by the committee that the name of Captain Tarpley White was wholly omitted in what has been commonly called the Chesterfield arrangement—an arrangement of the Virginia continental line, which took place in the beginning of the year 1781, at Chesterfield, in Virginia. The records of the proceedings of the board of officers who conducted this arrangement make no mention whatsoever of the name of Captain Tarpley White. The committee are, therefore, strongly persuaded that he resigned his commission, probably on the 15th of February 1781, as he appears to have received his pay as an officer in the continental line up to that time, under the act of the November session of the Virginia legislature of 1781, and does not appear to have been in the service afterward.

The committee cannot otherwise account for the total omission of the name of Tarpley White, in the proceedings of the aforesaid board, than by supposing he resigned his commission, at some period of time prior to the termination of their duties. If he had been retained in the service, his name would have appeared on the new roll of officers made out by that board. If he had been excluded as a supernumerary or superseded officer, he would have been noted as such; for that board did make out and record, among their proceedings, a list of supernumerary and superseded officers, and Tarpley White's name is wholly omitted.

WM. V. HEARD, HEIR OF GEN. JOHN HEARD.

JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

Mr. DRUM, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of Wm. V. Heard, heir and legal representative of General John Heard, and also of General Nathaniel Heard, deceased, both officers of the revolutionary war, beg leave to report:*

That they have fully examined the claim of the petitioner, and recommend that it be rejected. The committee have very little doubt that both General Nathaniel Heard, the grandfather, and General John Heard, the father of the petitioner, were officers of the revolutionary army, and probably performed valuable services, although little, if any, testimony has been furnished upon the subject, except the testimony contained in private letters and other evidence of like character. But the committee have not been able to see in the fact that the ancestors of the petitioner were meritorious officers of the Revolution, without any evidence whatever in addition to establish and justify any special right to relief from the government, anything to authorize the committee to allow the claim.



JOHN JOHNSON.

JUNE 10, 1854.—Laid upon the table and ordered to be printed.

Mr. GREENWOOD, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred the memorial of John Johnson, esq., asking seven months' compensation as agent for the Wyandott Indians in 1841 and 1842, have had the same under consideration, and respectfully report as follows:*

In March, 1841, the memorialist was appointed, by direction of the President, commissioner for the purpose of negotiating a treaty with the Wyandotts. The object of the commission was not finally consummated until the month of March, 1842; in the meanwhile, such seemed to be the peculiar state of affairs at the Wyandott agency, upon the proper regulation of which depended, in a great measure, the success of the negotiation, Mr. Johnson, the memorialist, thought it important for the favorable negotiation of the treaty that he should tender his services to assist in the management of the business of the sub-agent.

The committee deem it proper to state, also, that during the period charged for, from April 1st, 1841, to June 30th, 1842, the Wyandotts had a regularly appointed sub-agent. Upon the representations of the memorialist respecting the conduct and inefficiency of the sub-agent, the Department of the Interior made available the *voluntary* offer and position of the memorialist to assist and control, to a limited extent, the affairs of the sub-agency, but under no circumstances was he to be regarded as acting in a twofold capacity, for which he should receive two measures of compensation, and the memorialist was so informed, and was also informed that he could not receive the appointment of agent so long as he held the appointment of commissioner, because the act of March, 1839, expressly forbade it. The department did not view the discharge of certain duties pertaining to the sub-agency, which Mr. Johnson voluntarily undertook, in the light of a separate office, as acting agent or otherwise, from that of commissioner to negotiate a treaty. Mr. Johnson while there made two applications for the appointment of sub-agent to the Wyandott Indians.

The memorialist was actually engaged in negotiating the treaty during a considerable part of the time specified in his charge for services as acting agent. Therein he says: "There will be due to me as commissioner for negotiating the treaty with the Wyandotts, for Jan-

uary, February, March, April, and to the 10th of May, 1842—all time employed—one hundred and thirty days, at \$8 per day, m \$1,040." The committee are of opinion, upon a careful examination of the memorial and evidence, that the memorialist is not entitled to relief.



CLAIMS—BLACK HAWK WAR.

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JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

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THE, from the Committee on Indian Affairs, made the following

REPORT.

*Committee on Indian Affairs, to whom was referred a resolution instructing them to inquire into the expediency of passing a law providing a settlement of the claims growing out of depredations committed by Indians in the Black Hawk war of 1832, report:*

That they have taken into consideration the resolution, and have inquired both into the nature and extent of the depredations committed upon the property of citizens of the United States, residing principally in the State of Illinois. The claims, for the payment of which a general law is now asked to be passed, have been, in a great measure, officially brought before Congress and rejected. An adverse report upon these claims was submitted at the 1st session of the 24th Congress, which was sustained by the House, thereby rejecting the claims now brought to be revived and discharged. The committee have been furnished, by the Indian Bureau, with abstracts of a great number of such claims. The abstracts are predicated upon the report of a commission organized under the direction of General Atkinson in January, 1854. The commissioners, Capt. Palmer and Wm. Hempstead, esq., were charged with the duty of "collecting, adjusting, and examining outstanding claims arising from the movements of the militia and friendly Indians called into service" during the spring and summer of 1853. All the claims on file in the Indian Bureau, (and your committee are satisfied that they embrace all contemplated in the resolution which is the occasion of this investigation,) though presented to, and received by the commissioners, were not within the limits of their jurisdiction, and were consequently disallowed. This decision of the commissioners, which was approved by the Indian Bureau, it is not intended violated any right of the claimants under existing laws or uniform practice of the government. Should Congress now interpose a remedy, and pay that class of claims to which the resolution refers? Your committee think not. The depredators (the Sac and Fox Indians) were at war with the United States. Soon after the commencement of hostilities, the inhabitants on the Indian frontier abandoned their homes, crops, and property, and sought safety by fleeing into the denser white settlements. It is alleged by some of the claimants that their absence from home, occasioned by apprehension of danger from the Indians, prevented them harvesting their grow-

ing crops ; some ask reparation because they were prevented, from the same cause, tilling their crops ; and others found their claims upon seizure and appropriation of their personal property by the hostilities. Is there anything peculiar in this state of the facts which authorize and require the government to pay for these real and positive losses ? The rule which has been uniformly pursued by this government towards its citizens, is to pay only such losses as were occasioned by the action or authority of its own officers. For example, if the lands of a citizen are occupied by troops, and are destroyed by the troops on account of such occupancy, the government will indemnify him for casualties arising in the progress of the war from the action of the enemy, or the citizen himself, to his property, no indemnity has been made, whether the enemy was white or red ; and it would be, in the judgment of your committee, highly inexpedient to change this rule. War is calamitous to the government as well as to the citizen, the former should attempt, in addition to the support of armies and navies, to indemnify the citizen for every personal loss, positive or indirect, but to do so, if it were attempted, would entail a most burdensome public debt, to be discharged eventually in national bankruptcy. Every citizen enters a share of the sacrifice of a national war, and it would not be equitable to tax all to relieve from that sacrifice a few whose losses may be susceptible of ascertainment, when the great mass have been equally sufferers, remotely, if not directly.

Your committee, being satisfied that any legislation upon the subject is inexpedient, ask to be discharged from the further consideration of said resolution.

**SARAH CHESLEY.**

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**JUNE 10, 1854.**—Laid upon the table, and ordered to be printed.

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**Mr. ELLISON**, from the Committee on Revolutionary Pensions, made the following

**REPORT.**

*The Committee on Revolutionary Pensions, to whom was referred the petition of Sarah Chesley, with the accompanying statement, beg leave to report :*

That the petition is not sustained by sufficient proof to induce your committee to change her present rate of pension; and they therefore report unfavorably.



**MARY BLAKENEY, WIDOW.**

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**JUNE 10, 1854.—Laid upon the table, and ordered to be printed.**

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**Mr ELLISON, from the Committee on Revolutionary Pensions, made  
the following**

**REPORT.**

*The Committee on Revolutionary Pensions, to whom was referred the petition  
of Mary Blakeney, asking for relief, in an increase of pension or other-  
wise, beg leave to report:*

**That the petition is wholly unsustained by proof; and they therefore  
report unfavorably.**

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ELIZABETH MARTIN.

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JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

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Mr. I. WASHBURN, jr., from the Committee on Revolutionary Pensions,  
made the following

REPORT.

*The Committee on Revolutionary Pensions to whom was referred the petition of Elizabeth Martin for a pension, have had the same under consideration, and report;*

That, for the reasons set forth in the report of the Committee on Revolutionary Pensions made by Mr. Donnell in 1848, to which they would refer, they are constrained to report adversely to the prayer of said petition, and would ask to be discharged from the further consideration of the same.





**JOHN WILSON.**

**JUNE 10, 1854.**—Laid upon the table, and ordered to be printed.

**Mr. LETCHER**, from the Committee of Claims, made the following

**REPORT.**

*The Committee of Claims, to whom were referred the petition and papers of John Wilson, report :*

That they have examined this case, and are of opinion that the relief prayed for ought not to be granted. The nature of the claim is well explained in the petition, which is appended hereto; and the views of the committee are given, upon the class of claims to which this belongs, in a report made at this session upon the claim of Joseph D. Ward. The committee, therefore, recommend the adoption of the following resolution :

*Resolved*, That the prayer of the petitioner ought not to be granted.

*To the House of Representatives :*

Your memorialist respectfully represents, that in pursuance of a resolution of the House of Representatives of May 4, 1848; a number of clerks were appointed, by the Clerk of the House of Representatives, to prepare a map of the land States, for reasons therein named, whose duties were to be performed in the General Land Office; that the records of said office furnished the materials for their operations, and that it was necessary those operations should be under the guidance of some one in said office familiar with the records; that your memorialist, from his intimate knowledge of the same, was directed, by his superior, to attend to that duty; and although his regular duties, as chief clerk, were heavy and responsible, he was required to add to his labors the superintendence of the business created by the above resolution. To do this, he was compelled to use as much time out of business hours as his regular official duties required, and that, too, when nature required rest and recreation. Supposing that the wishes of the House would be answered by a vigorous exertion on his part, he did not withhold it, relying entirely on its justice for suitable remuneration.

Your memorialist, therefore, prays your honorable body that a compensation may be granted him for his arduous labor.

He annexes hereto the opinions of the Commissioner of the General Land Office and Clerk of the House of Representatives on the subject, as evidence of the justice of the claim; and will ever pray, &c.

**J. WILSON.**

WASHINGTON, *February 14, 1852.*

DEAR SIR: A question, I understand, has arisen, relative to the amount of compensation that should be allowed me for superintending and directing the preparation of the maps of the land States, under the resolution of the House of Representatives. To a correct determination of this question, the nature and character of my duties, in connexion with this service, may be important. Those duties were, to determine the scale upon which the work should be done; to decide all doubtful questions of sales or locations, involving a construction of all the land laws from the earliest periods, particularly under the credit system and relief laws; to arrange all conflicts, correct all errors, determine all discrepancies in the surveys; to instruct the new hands constantly employed in the nature of their duties; for a long time to apportion to each their daily task, and to ascertain that it was correctly and fully performed, and to supply all necessary instruments, materials, &c. Moreover, I was required to examine and certify all accounts; and, finally, to examine the protractors and colorings, and to certify them only when correct. More than the amount that may be awarded me, or than I would think of asking, was thus saved to the government through my agency.

The draughtsmen employed on this service were allowed \$1,800 per annum, and the clerks, who merely took off the sales, preparatory to coloring, 1,200 per annum. Towards the last, the pay of the draughtsmen was reduced to \$1,500 per annum, at my instance; and subsequently, the balance of the work, also at my suggestion, was given out by contract; still, however, under my superintendence and direction.

On consultation with those who were familiar with my duties, and the amount of time required to perform those connected with this business, and in view of the responsibility incurred, they are of opinion that I am entitled to at least the highest rate heretofore allowed on this service; that is, \$1,800 per annum. You know, sir, whether the government will, or will not, be a gainer by allowing me this stipend, and whether it has, or ever had, a more faithful or untiring servant.

Though not connected with this subject, and though I ask not, and never intend to ask, compensation for it, yet I can show, by facts and figures, that, by the system and arrangement introduced by me into the Pension Office, at a sacrifice of time, labor, and health, that can scarcely be credited, when I might have comfortably enjoyed the comparatively easy position I hold in the General Land Office, I have saved to the government more than \$35,000 in the space of the last five months—besides having the business better done; that is, it would have cost the government more than \$35,000 more than it has cost them in having the labor performed, if it had kept on as it did before I went there.

I make this statement simply to satisfy you and the committee that I am not disposed to seek additional compensation for duties performed, however arduous, within the sphere of my appointment; and in no case without rendering a full equivalent.

Very truly yours,

J. WILSON.

Hon. J. McCalla, *Washington.*

GENERAL LAND OFFICE, *February 26, 1851.*

SIR: Having been requested by John Wilson, esq., the chief clerk of this office, to give my views of the justice and propriety of an allowance being made him by you, or the Committee on Accounts of the House, for his services in superintending and directing the preparation of the maps of the land States, ordered by resolution of the House of May 4, 1848, I have to state that, in my opinion, he is justly entitled to such compensation. Those maps were ordered by the House to be prepared by the procurement of the Clerk of the House, under the supervision of the Commissioner of this office. The duty of superintending and directing this business, and of instructing those who were employed on it, was devolved on Mr. Wilson, because he was deemed most competent for it, and not because it was considered as belonging, in any manner, to his duties as principal clerk of surveys or of public lands; nor was it because he had leisure to attend to it—his whole time, and frequently long after office hours, being fully occupied by the current duties of his office. The consequence was, that, for a considerable period, he had to do most of his current duties after the regular office hours.

I do not think that this claim should be considered as barred by the 12th section of the act of August 26, 1842. In this case, the additional duty performed by him did not belong to any other clerk or other officer in the same or any other department, but was a new branch of duty necessarily growing out of the provisions of the resolution. Nor was it regarded as extra service, which Mr. Wilson could properly be required to perform. Had this service been rendered by any person not in office, there would have been no doubt of the justice and propriety of paying him for it; and the fact that double duty was thus performed by Mr. Wilson, renders his claim equally just and proper.

I therefore consider Mr. Wilson as legally and equitably entitled to compensation from the House for this service. The amount, I understand, he leaves to be decided by yourself or the committee.

With great respect, your obedient servant,

J. BUTTERFIELD, *Commissioner.*

Hon. R. M. YOUNG,

*Clerk House of Representatives U. S.*

CLERK'S OFFICE, HOUSE OF REPRESENTATIVES U. S.,  
*Washington City, February 26, 1851.*

I concur with the Commissioner of the General Land Office in the opinion that Mr. Wilson is not only entitled to a reasonable, but a liberal compensation for his services. It was a new duty devolved upon him, first as principal clerk of the public surveys, and subsequently as chief clerk of the General Land Office, which greatly increased his ordinary and accustomed labors, and almost daily made it necessary for him to perform much of the service required of him in his own appropriate station out of office hours. I will also add that Mr. Wilson's qualifications as a clerk are extraordinary, his habits of industry unsur-

passed, and that his physical as well as mental powers enable him to accomplish much more than ordinary business men can do.

RICHARD M. YOUNG,  
*Clerk House of Representatives U*

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FEBRUARY 23, 18

DEAR SIR: From the passage of the resolution, in May, 184 early in April, 1850, I had the supervision and direction of the se From that time I was absent south, till early in June; but after of the same year I had nothing to do with the matter, except to c to the accounts, and examine the correctness of the work when fin and certify to the same.

Yours,

J. WILSON

JOSEPH D. WARD.

JUNE 10, 1854.—Laid on the table, and ordered to be printed.

ETCHER, from the Committee of Claims, made the following

REPORT.

*Committee of Claims, to whom were referred the petition and papers of Joseph D. Ward, report:*

they have carefully examined the claim asserted by the petitioner and are of opinion that it does not rest on principles which merit a sanction. The petition, annexed hereto, explains the claim. It is the opinion of this committee that the officers of the government should, on all occasions, to render the best services, both of body and mind of which they are capable. No man ought to be intrusted with the management of a free government who will not honestly, and without reluctance, perform the duties pertaining thereto with zeal, industry, and to the extent of his ability. In creating an office, the government should carefully consider the nature and extent of the labor and skill required for the proper and punctual discharge of all its duties, both direct and indirect, and fix a salary in accordance therewith. It will sometimes happen that salaries, through inadvertence, or want of sufficient information, may be made too large or too small, compared with the services to be performed. When this occurs, and is shown, the legislative body will correct the error.

The salaries of officers ought to be justly apportioned to the labor, skill, and importance of the duties to be performed. They should neither be extravagant nor illiberal, both extremes being unfriendly to the good of our institutions.

An officer is legally and equitably entitled to receive the salary attached to the office which he accepts. If it is reduced, or if he finds it inadequate, the government, however inconvenient may be the loss of his services, cannot justly complain if he surrenders it. If, notwithstanding the reduction or the inadequacy of the salary, the officer remains, for any public or private reason, to remain in the public employment, his decision gives him no legal claim for an *additional* allowance beyond that provided by law from the public treasury. His continuance is wholly optional with himself.

To make an extreme case of this kind, where the labors and responsibilities of an office are great, the pay small, and the equitableness of an additional allowance of the highest grade known to this class of officers.

Would not the establishment of the practice, (under *any* of the many pretences set up by this large class of claimants,) of paying government officers sums of money *in addition to their regular salaries*, open the door to a nation large as ours, to great abuses, and ultimately to gross

favoritism? Special laws, to remedy cases of supposed hardship, would gradually conduct to results equally pernicious to the government and to the people.

The committee recommend to the House that the salaries of all of fices, legislative, executive, and judicial, be looked into and made just and adequate; for such salaries will command the proper services required by our government. Such salaries will command the service of men who will administer our government with efficiency, economy and liberality. But they cannot recommend special additional allowances of money to public officers by special laws. Quite as many would be wrongfully omitted, by entering upon the business of special legislation, as would be rightfully included. It is deemed best to labor to make the salaries *just*, and then vote extra allowances to no one.

The committee offer the following resolution:

*Resolved*, That the prayer of the petition be not granted.

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*To the honorable Committee of Claims of the House of Representatives of the United States.*

**GENTLEMEN:** The undersigned begs leave to call your attention to a grievance under which he has for some time been laboring; and coming, as he considers, under your jurisdiction, and not without something like *recent* precedent, earnestly desires and respectfully asks your favorable consideration and action in his case, which he will briefly state.

From the 16th of May, 1836, to the 4th of September, 1837, (as House documents Nos. 7 of the 2d sessions of the 24th and 25th Congresses will show,) he was, in common with other gentlemen, employed temporarily in the Clerk's office of the House of Representatives U. S. and performed duties alike with them, (see accompanying letters;) yet, while they were each paid \$4 per day, Sundays included, he received only \$75 per month; and, what is more, of the several messengers in that office, there was not one whose annual compensation, with the at that time usual extra allowance by resolution of the House, did not exceed his. And what is a still greater grievance, and what he feels quite confident the honorable committee and the House will not overlook in this case, is the fact that an illiterate *colored* man, "Abram Smallwood," employed for menial services about the office, more than equalled his annual pay!

The undersigned considers it useless to add anything more than to cite one or two cases below, as he is well satisfied that the committee and the House will not sanction such an invidious distinction, nor permit a case of such glaring injustice to any longer exist.

If messengers can be allowed clerks' pay, surely a *clerk* can be allowed the same. (See the cases of Simon Brown and J. E. Millard. The former can be found in House Journal, 2d session 28th Congress page 551; the latter, 2d session 29th Congress, House Journal page 519.)

The undersigned has the honor to be, very respectfully, your obedient servant,

JOSEPH D. WARD.

**JAMES B. ESTES.**

**JUNE 10, 1854.**—Laid on the table, and ordered to be printed.

**Mr. LETCHER**, from the Committee of Claims, made the following

**REPORT.**

*The Committee of Claims, to whom was referred the petition of James B. Estes, of Wisconsin, report:*

That, after a careful investigation of the papers in this case, they have determined to adopt the report made by Mr. Vance at the first session of the twenty-eighth Congress. That report states the facts with minuteness and accuracy, and the committee concur unanimously in the conclusion therein stated—that the petitioner is not entitled to relief.

**MAY 24, 1844.**

*The Committee of Claims, to whom was referred the petition of James B. Estes, of Wisconsin, report:*

That this claim is for compensation for services performed by the petitioner for the United States, from the 11th day of May, 1832, to the middle of the following August; for a horse furnished a volunteer in the service of the United States; and for wheat in the stack, and oats in the field; and for poultry, bees, household furniture, &c., taken and used, or destroyed, by the troops from Michigan and Illinois, in the service of the United States. The petitioner says his loss exceeded \$6,250, and prays relief for that amount.

As it was, very naturally, a matter of surprise that a claim for so large an amount should be permitted to remain dormant for twelve years, instead of bringing it promptly before the War Department or before Congress for payment, a letter was addressed to the Third Auditor of the Treasury, for information throwing light upon it; and his very full reply thereto is appended to, and made a part of, this report. The committee are of the opinion, that for the services of the claimant the laws of the United States have already made provision. Besides, it is most manifest that he has already been paid, and his receipt therefor is in the possession of the government. The same remark will apply in relation to the claim set up for the payment for a horse.

It is alleged by the petitioner that he sustained a great loss in the

destruction of bees, garden vegetables, poultry, and furniture, said to have been taken by the troops, and used or destroyed.

Without stopping to inquire whether such a depredation was or was not committed by the troops, as specified in this item of the claim, it is sufficient to say that the acts complained of do not appear to have been at all warranted by law, or by the necessities of the public service. The committee regard them as lawless outrages and trespasses upon private property, for which the wrong-doers alone are accountable. The claim against the United States for indemnity could only be allowed upon a principle that would make the government responsible for the trespasses or other lawless acts of those employed in its service. Such a responsibility, it is believed, has never been recognised or acted upon; nor could the committee, consistently with their sense of public duty, recommend its assumption, even where the wrong is flagrant, and most deserving of rebuke and indignation. But the United States cannot be regarded as the authors of such wrongs and outrages, and all their responsibility must rest upon their perpetrators.

The claim set up for wheat and oats remains to be considered.

The most obvious, distinct, and well-established ground, recognised by this and by all other civilized nations, is, that when the private property of the citizen has been taken and used by the nation for the common purposes of all, and, in consequence of such employment, it has been destroyed or endamaged, the government of the nation is bound to make good the loss. This principle was, in the early history of our government, deemed so sacred and so just, that it was incorporated into one of the amendments to the federal constitution, where it is, in terms, provided that no private property shall be taken for public use without just compensation.

Were the wheat and the oats of the petitioner taken for and applied to public uses? or was the taking a mere wanton and unlawful depredation?

An investigation into the truth of the latter branch of the inquiry is, at this time, unnecessary; for it appears, from the able report before cited, that in April, 1833, he presented a bill for 200 bushels of wheat, at \$1 per bushel, to the quartermaster, and was paid. If he had a valid claim for more than \$6,000 against the United States, it is *remarkable*, to say the least of it, that he should have allowed *that* to remain unrepresented, and yet to have so zealously prosecuted his claim for the horse, the wheat, and the personal services rendered by himself, and for which he received payment. For the same services, the same horse, and, to all appearance, for the same wheat, (largely multiplied in amount,) he asks, twelve years after they were taken, and when it is difficult to ascertain facts, to be *again* paid. It is also worthy of remark, that the evidence lately taken, and after the lapse of so many years, values the wheat at \$1 25; and is based upon the supposition that, in the summer of 1832, all of the crop of 1831 remained in the stacks unthreshed and unused—and that, too, in a country where wheat is represented as scarce and dear; whereas the claimant, in April of the next year after the war, put in his bill for only 200 bushels of wheat, and at \$1 per bushel. If wheat had been worth more than \$1 per



ishel, or if he had furnished or lost more than 200 bushels of wheat, rely the claimant would have rendered his account accordingly.

The committee offer the following resolution for the adoption of the house :

*Resolved*, That the prayer of the petition ought not to be granted.

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TREASURY DEPARTMENT,  
*Third Auditor's Office, April 17, 1844.*

SIR : I have the honor to acknowledge the receipt of your letter of the 30th ult., enclosing the petition and papers of James B. Estes, and inquiring whether there be any evidence in this office to show that he was in the service of the United States in 1832 ; that he furnished a horse to a volunteer in said service, and for the use of the United States, and was charged ; that his wheat and his oats were taken and used, and to what amount, or to any amount, as claimed ; and that his furniture, poultry, and bees, were destroyed, as set forth ; and if so, whether he has received any compensation therefor, and to what amount ; and whether any money has been paid to him for the wheat or the oats, &c., by any officer connected with the Illinois militia at that time in the United States service. And your letter concludes with a request for an early reply to the foregoing interrogatories, and for any *other information* which I may, after examining the papers in the case, deem necessary to enable the Committee of Claims to pass understandingly upon the claim.

It is represented in the petition, dated January 1, 1843, and not verified on oath, that the petitioner, from 1828 until then, resided in the Territory of Wisconsin ; that in the spring of 1832, upon the breaking out of hostilities with the Sac and Fox Indians, (or what is usually called the Black Hawk war,) General Atkinson made a requisition upon Colonel Henry Dodge to raise all the forces in his power to suppress the threatened danger ; that upon the requisition of Colonel Dodge, the petitioner, on the 11th May, 1832, volunteered his services for the defence of the country, and immediately, for the safety of his family, removed them from his plantation in Iowa county to Prairie du Chien, where he supported them during the war at his own expense, while the family of almost every other settler in the country was supported during that time at the expense of the government out of the public stores ; that having provided a safe retreat for his family, he immediately left all his business and his plantation, upon which were growing seventy-three acres of oats, then worth at least \$1,500, and upon which he had also 2,500 bushels of wheat in the stack, worth at that time at least \$4,000 ; that he left at his house a valuable lot of household furniture, and furnishing himself with his own horse and equipments, provisions, arms, and ammunition, he joined Colonel Dodge, and was employed during the war in carrying expresses through the country, from one part to another, which was the most dangerous kind of service ; that he continued in this manner until the termination of the war, about the middle of August, devoting his whole time, energies, and means to the service of his country ; that while he was thus engaged himself in serving his country,

the mounted troops in the service of the United States quartered on his plantation, and turned their horses into his growing crop of oats, and foraged them upon the wheat in the stack, and literally destroyed ~~the~~ whole of both; that the troops also destroyed all of his household furniture, which was appraised, under the direction of Colonel Dodge, at \$650; that he has never received any compensation whatever for his services, or remuneration for his losses; and that he prays to have made to him such an appropriation for his services and losses as shall be reasonable and just. With the petition, there is an affidavit of William Davidson, dated 23d January, 1843, and also four other affidavits dated in January of the present year.

William Davidson has testified that he was well acquainted with the petitioner, who lived in the vicinity of Dodgeville, in the Territory of Wisconsin, and had improved an extensive farm; that in the summer of 1831 he had harvested a large crop of winter wheat, which was standing in stacks at the breaking out of the Sac and Fox Indian war in the spring of 1832, and was considered worth \$1 25 per bushel to deponent's own knowledge, and [had] a large crop of oats sown that spring; that the company from Platteville, then under deponent's command, was ordered to the farm of said Estes to recruit and rest their horses; that after a few days they were ordered to march; that deponent was there several times after, and found the grain was used or destroyed by the troops from the mines and Illinois, ordered there to recruit their horses; and that the average price of flour in the season of 1832 at Galena, fifty miles south, the only place it could be had, was from \$8 to \$15. In one of the other four affidavits, signed "James H. Gentry, late captain," the deponent has testified that he has been well acquainted with the petitioner from the year 1828 to the present time; that the petitioner lived in the vicinity of Dodgeville, and had improved an extensive farm; that in the summer of 1831 he harvested a large crop of winter wheat, which was standing in the stacks at the breaking out of hostilities with the Sac and Fox Indians in the spring of 1832; that deponent commanded a company during the war, and by order of Colonel Dodge, who then commanded the troops of the mining district, he was frequently sent to the farm of the petitioner for the purpose of recruiting the horses; that grain of all kinds bore a very high price at that time; that the horses belonging to the service were fed on the wheat from the stacks standing on the premises of the petitioner, of which there were a large number; that the petitioner was absent from his farm during the whole of the war, and was actively engaged in procuring horses and arms for the service, and in the carrying of expresses from the commencement to the termination of the war, thereby rendering great service to his country. Two other of the affidavits appear to have been made by Andrew Whitaker, and who, in one of them, has testified that he has been well acquainted with the petitioner from 1825 to the present time; that petitioner lived in the vicinity of Dodgeville, and had improved an extensive farm; that in the summer of 1831 he harvested a large crop of winter wheat, which was standing in the stacks at the breaking out of hostilities with the Sac and Fox Indians in the spring of 1832; that deponent was at said farm previous ~~and~~ during the Indian war frequently, and saw numbers of horses, then ~~in~~

the service of the United States, fed upon the wheat taken from the stacks standing on the premises of the petitioner; that there were sown on the said farm, in the spring of 1832, seventy-three acres of oats, and when said oats were nearly matured, a large number of horses that were then in the service were turned into said oats promiscuously, in consequence of which the whole crop was entirely destroyed; that deponent is well acquainted with farming in all its various branches, and as regards the wheat crop, he could not, from the number of acres sowed, and the great yield which followed, estimate it at less than 2,500 bushels, and verily believes it would have turned off 3,000 bushels, the whole of which was destroyed and used by the troops quartering upon the premises; that in regard to the crop of oats, he would state that the land was very good upon which they were sown, and well cultivated; and at the time the horses were turned in, they were fully headed out, and looked very promising; that he should think thirty bushels to the acre would be a very moderate estimate; that grain of all kinds bore a very high price at that time in the country; that deponent knew of a great many sales of oats and wheat from 1832 to 1834; that oats sold readily at 75 cents per bushel, and wheat at \$1 25 per bushel; that petitioner had a large quantity of valuable furniture, all of which was destroyed by the troops then quartering at the house, and was, deponent verily believes, worth not less than \$650; that petitioner had about twenty stands of bees, all of which were destroyed by said troops, as well as all his garden vegetables, and a large quantity of tools; that, in fact, the whole place was completely robbed of everything valuable upon it; and that the damages, independent of the grain, could not have been less than \$1,000. He has, in his other deposition, testified that he was well acquainted with a bright bay horse, about sixteen hands high, and well proportioned, owned by petitioner; that at the breaking out of hostilities with the Sac and Fox Indians, said horse was furnished by petitioner to a volunteer of the name of David Shay, then in the service of the United States, commanded by Colonel Henry Dodge; that he saw said Shay receive said horse, who left Mineral Point, as was said, on an expedition to Rock river, in the State of Illinois; that on the return of the troops, said Shay informed deponent that said horse was lost during the trip, which was confirmed by others belonging to the company; and that said horse was worth at that time not less than \$125. The remaining affidavit appears to have been made by Thomas Jenkins, and who has therein testified that he was well acquainted with a bright bay horse, about sixteen hands high, well proportioned, and owned by petitioner; that at the time of the breaking out of hostilities with the Sac and Fox Indians, a volunteer by the name of David Shay rode the above-described horse, and used him in the service of the United States; that said Shay belonged to a company commanded by Captain James H. Gentry, which belonged to the regiment commanded by Colonel Henry Dodge; that Shay rode the horse on an expedition to Rock river; that on that trip five or six horses were lost, (supposed to have been stolen by the Indians,) and among them the horse above described; that deponent was one of fifteen or sixteen detailed to pursue said horses, and followed on the trail some fifteen or sixteen miles to Rock river, when it was ascertained that the horses had

crossed over, and the pursuit was abandoned; and that deponent believes said horse to have been worth \$125.

With the papers there is also found to be a letter to you from the Hon. Henry Dodge, having appended thereto a statement of the Hon. Augustus C. Dodge. The former represents that the petitioner resided, during the continuance of the Sac and Fox war of 1832, in the immediate vicinity of the residence of the writer; that the inhabitants of that region of country were forced, and many of them were obliged to leave their stock and other property at their homes exposed to the hostile Indians, as well as to the wants of the mounted troops, then in the service of the United States, who used the stock of the inhabitants, the grain and forage of those who were obliged to abandon their homes from fear and dread of the Indians; that the writer was the commanding officer of the Michigan volunteer mounted troops for the protection of what was then called the mining country; that Capt. Davidson commanded one of the volunteer companies under his command; that he has the most entire confidence in the truth of Capt. Davidson's statement under oath; that the price of wheat at the time it was taken from the farm of the petitioner, for the use of the mounted troops, was \$1 25 per bushel; that the writer had directed Captains Davidson, Gentry, and Rountree, commanding mounted companies of the regiment, to recruit the horses of their companies at the farm of the petitioner, as his was the largest and the only farm in the neighborhood where forage and grain could be procured; that the writer has no hesitation in stating that he believes the affidavit of Mr. Whitaker is true, and that the estimate of his personal property is correct as stated in the petition; and that the petitioner acted under the orders of the writer during the war referred to, and was actively engaged in the performance of public duties, in procuring arms and munitions of war, horses, and provisions for the mounted troops, at the hazard of his life and the loss of his property, and is desirous to be paid for his losses. In the statement of the Hon. A. C. Dodge, he has expressed himself to be acquainted with most of the facts and circumstances set forth in the letter, and has declared that he bears evidence to their truth; that he knows the price of wheat to have been at the time as it is therein stated; that he knows nothing of the quantity of the articles furnished, but does know that they were furnished; for he was several times at the farm of the petitioner during the continuance of the Black Hawk war, (as called,) and saw the mounted volunteers in the service of the United States using his grain to feed their horses upon; that the petitioner was not a squatter nor an intruder upon the public lands; that he was invited, as were all other persons settled in that district of country, by proclamation of an authorized agent and officer of the government, to make his settlement; that a lease was granted to him by the before mentioned officer for his premises, and one-tenth in the first instance and a sixth in the second, of all the lead made by him, was paid to the government of the United States; and that the writer, at any moment is ready to make oath to the truth of the above statement.

In the searches in relation to this case, it has been found that on the rolls of one of the companies of Colonel Dodge's regiment of Iowa mounted volunteers, the petitioner was mustered as a private therein,

from the 11th May to the 9th October, 1832, (4 months and 28 days;) that on the receipt roll his pay and allowances are thus made up:

Pay .....	\$32 65
Use of horse at 40 cents per day .....	60 00
Rations and forage at 25 cents per day.....	38 00
	<hr/>
	130 65
Stoppage.....	34 75
	<hr/>
	95 90
	<hr/>

and that the balance of \$95 90 is receipted for by him. A general remark on the roll, as to the stoppages, shows them to have been for one ration per day for the company throughout; forage received in kind; horse-shoeing for the company, done by order of Colonel Dodge, and paid by quartermaster's department, &c., &c. Many of the members of the company are shown to have had no horses of their own, but to have been furnished with horses belonging to other persons; and as to these, the stoppages extended to the sums payable for the use of them, and payments thereof were made by the quartermaster's department to the owners, upon a separate roll. The rolls of Captain Gentry's company contain entries evincing a private to have served therein, of the name of David Shay, and the sum entered for stoppage against his name included the amount of the allowance for use of the horse he rode, thus indicating that it was not his own. But there is no remark expressing it to have been furnished by the petitioner; nor does the roll of payments by the quartermaster's department to the owners of horses furnished for the use of volunteers of the company, show the petitioner to have either been, or sought to be, paid for the use of a horse furnished by him to either Shay or any other of the volunteers belonging to it.

In 1834, several claims appear to have been received at this office from R. W. Brush, of Galena, and among them one in the name of James B. Estes. The letter to Mr. Brush, returning them, appears by the record to have been dated 21st August, 1834, and to have contained as follows: "As to the claim of James B. Estes, there are duplicate accounts and receipts purporting to have been signed by him, for \$110 for a bay horse, saddle and bridle, expressed to have been lost in the service of the United States during the late war, accompanied by certificates of Colonel Dodge and Captain James H. Gentry. The certificate of Colonel Dodge, dated 19th August, 1832, states that Estes had a bright bay horse, saddle, and bridle, valued in the service of the United States at \$110; and that the horse was lost on one of his (the Colonel's) mounted expeditions to Rock river. At what time or in what manner the loss happened, his certificate does not explain, and the loss of the horse only is therein mentioned. Captain Gentry's certificate is dated 10th October, 1833, and states that he knew the horse certified to by Colonel Dodge; that he was appraised at \$110; and that he served in his company, and was taken by the Indians at Hickory Point on the 8th of June, about 29 miles from Rock river. His

certificate is also silent as to the loss of the saddle and bridle; and for the loss of a horse in the way described the law does not provide. Had it done so, Captain Gentry's certificate (it not having been given till after he had ceased to be in the United States service) would have had to be sworn to before it could have been received as evidence; and a deposition, too, from the claimant, such as the regulations call for, would have been needed." Captain Jouett, of the United States army, appears to have presented the claim to me again, with others, in February, 1835, and when the same were returned to him, in a letter referring to the one addressed to Mr. Brush. No new testimony accompanied them, and no further trace thereof can be found.

A voucher for a payment of \$110 to James B. Estes, by Major J. B. Brant, quartermaster, for a "sorrel horse delivered to Colonel H. Dodge, for the use of the Iowa county (Michigan Territory) militia in the service of the United States," has been met with in Major Brant's accounts, and annexed to which there is a certificate of Colonel Dodge, wherein he has stated that Captain James B. Estes about the 20th April voluntarily furnished to him a sorrel horse for the public service of the United States; that he would estimate its value at \$110; that it had remained in the public service since that period; and that he [the Colonel] rode him, while in his possession, between 600 and 700 miles, the greater part of the time forced marches; and at the bottom of the certificate there is a memorandum signed "W. W. Woodbridge, late adjutant Iowa militia," expressing the horse to have been retained by Colonel Dodge, and turned over to dragoon service. The certificate of the Colonel is dated 19th August, 1832, and the receipt for the \$110 on the 19th September, 1833.

Of any services by the petitioner other than as a private of Captain Gentry's company, no evidence whatever could be found; and had he performed any entitling him, either by law or regulation, to additional compensation, I am not aware of any cause which could have prevented its obtainment, as disbursing officers were on duty with funds for the payment of all proper expenses during and for a considerable time after the expiration of the campaign; and in 1833 a board of commissioners for receiving and examining claims growing out of the campaign sat for many weeks at Galena, and to which a claim of the petitioner of \$110 for a horse (the one, it is presumed, already shown to have been paid) appears by the register of the board, now on file in this office, to have been presented.

With the accounts of Major Brant, the disbursing officer before named, a bill has been found, in which the United States are debited \$200 "for two hundred bushels of wheat, furnished as forage for the use of Captain James H. Gentry's company of Iowa mounted volunteers, in the service of the United States, at \$1 per bushel." At foot of it there is an affidavit of James B. Estes, expressed to have been sworn to by him on the 27th of April, 1833, before "J. Brisbois, justice of the peace" in and for the county of Crawford, Territory of Michigan; wherein he has declared that the bill is accurate and just, and that he had not given receipt for the same, or any part thereof, nor, by power of attorney or otherwise, authorized any person to receive the same for him, or in his name. And below the affidavit there is a re-

ipt of Estes for the \$200 from Major Brant, dated the 25th of May, 1833.

To this voucher another is annexed in this form, and as corroborative what appears therein :

"UNITED STATES,

To JAMES P. ESTES, Dr.

To 200 bushels of wheat, at \$1 per bushel, for the use of the

Iowa mounted volunteers..... \$200

"JULY 1, 1832.

"I certify that the above wheat was furnished as above stated, and a charge is moderate.

"JAMES H. GENTRY,

"*Captain of Iowa Mounted Volunteers, M. T.*"

No evidence of any other payment of this nature to the petitioner has been discovered on the searches; nor could any be found of the obtainment from him, for military purposes, of further supplies of any description.

He appears to have, with his family, moved away from his plantation; but whether or not he left any manager, or other person, in charge of it, the papers do not evince. If he did, the name of such manager, or other person, would need to be known, in order to ascertain whether any payments were made to him. If additional supplies of any kind were duly procured for public use from the plantation of the petitioner, and not paid for to any manager or other person on his behalf, I can imagine no adequate reason for his omitting to insert a charge for them in the bill already shown to have been verified by him in April, 1833, and afterwards paid.

On resort to the rolls of the regiment of Iowa volunteers in service of the United States in the summer of 1832, under the command of Colonel Dodge, there does not appear to have been in it any company commanded by an officer of the name of Wm. Davidson. A volunteer of that name is shown, by the aforesaid rolls of the company of Captain James H. Gentry, to have been mustered and paid therein as a private, from the 17th of July to the 9th of October, 1832; and a volunteer of the same name is found to have been mustered and paid as a private, on the rolls of Captain J. H. Rountree's company, from the 1st of May to the 17th of June; and on the rolls of Captain J. H. Dixon's company, from the 17th of June to the 17th of July, 1832. The entries on these rolls, as well as on those of Captain Gentry's company, include money allowances for forage of the horses of all the members for the entire periods of service; and the payments, except so far as the stoppages for forage in kind extend, appear to have been made accordingly.

The aggregate amounts of the stoppages for forage so furnished are shown on the rolls thus: as to Gentry's company, \$945 93; Rountree's, \$43 82; and Dixon's, \$23 68.

In the same degree as the volunteers received the money allowance for forage, they, of course, were bound to provide it themselves at their own expense.

No remuneration could have been paid by the disbursing officers,

nor could any allowance have been made by the accounting officers in respect of any depredations of the soldiery, or any unauthorized taking or destruction of the property of the petitioner by them.

He is observed to have assigned no reason in his petition for permitting a claim of such a magnitude as is therein indicated to remain dormant for more than ten years. Any proper claim, duly vouched, presented at the time, might have been readily paid.

The petition and papers are returned.

With great respect, your most obedient servant,  
PETER HAGNER, *Auditor*.

Hon. JOSEPH VANCE,  
*Chairman of the Committee of Claims,  
House of Representatives.*

HOUSE OF REPRESENTATIVES,  
January 26, 1844.

SIR: I respectfully represent to your committee that Captain James B. Estes, whose petition has been referred to you, asking to be compensated for property used and destroyed, and forage taken for the use of the mounted troops in the service of the United States, during the Sac and Fox war of 1832, resided in Iowa county, Territory of Wisconsin, in the immediate vicinity of my residence, during the continuance of that war; that the inhabitants of that region of country were forced, and many of them were obliged to leave their stock and other property at their homes, exposed to the hostile Indians, as well as to the wants of the mounted troops then in the service of the United States, who used the stock of the inhabitants, and the grain and forage of those who were obliged to abandon their homes from fear and dread of the Indians.

I then was the commanding officer of the Michigan volunteer mounted troops, for the protection of what was then called the mining country. Captain Davidson commanded one of the volunteer companies under my command. I have the most entire confidence in the truth of Captain Davidson's statement under oath. The price of wheat at the time it was taken from the farm of Captain Estes, for the use of the mounted troops, was one dollar and twenty-five cents per bushel. I had directed Captains Davidson, Gentry, and Rountree, commanding mounted companies of my regiment, to recruit the horses of their companies at the farm of Captain Estes, as his was the largest and the only farm in the neighborhood where forage and grain could be procured. I have no hesitation in stating that I believe the affidavit of Mr. Whitaker is true, and that the estimate of his personal property is correct, as stated in his petition. Captain Estes acted under my orders during the war referred to, and was actively engaged in the performance of public duties, in procuring arms and munitions of war, horses and provisions for the mounted troops, at the hazard of his life and the loss of his property, and deserves to be paid for his losses.

I have the honor to be, with great respect, your obedient servant,  
HENRY DODGE.

Hon. JOSEPH VANCE, *Chairman of the Committee of Claims.*



HOUSE OF REPRESENTATIVES,  
March 7, 1844.

I am acquainted with most of the facts and circumstances set forth in the foregoing letter, and bear evidence to their truth. I know the price of wheat to have been, at the time, as it is therein stated. I know nothing of the quantity of the articles furnished, but do know that they were furnished; for I was several times at the farm of Captain Estes during the continuance of the Black Hawk war, (so called,) and saw the mounted volunteers, then in the service of the United States, using his grain to feed their horses upon.

Captain Estes was not a squatter nor an intruder on the public lands. He was invited, as were all other persons settled in that district of country, by proclamation of an authorized agent and officer of the government, to make his settlement. A lease was granted to him, by the before-mentioned officer, for his premises. One-tenth in the first instance, and a sixth in the second, of all the lead made by him, was paid to the government of the United States.

The undersigned is ready, at any moment, to make oath to the truth of the above statement.

AUGUSTUS C. DODGE.

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HOUSE OF REPRESENTATIVES,  
February 14, 1854.

SIR: Will you oblige the Committee of Claims by informing them whether the seventy-three acres of growing oats, the two thousand five hundred bushels of unthreshed wheat, the twenty stands of bees, the large quantity of fowls, and all the garden vegetables of James B. Estes, alleged by him to have been taken, used, or destroyed by troops in the service of the United States, were, *within your personal knowledge*, taken, used, or destroyed by order of the commanding officer of said troops?

Most respectfully, &c.,

J. LETCHER.

Hon. HENRY DODGE, *U. S. Senate.*

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SENATE CHAMBER, February 15, 1854.

SIR: Yours of the 14th instant is this moment received, and in reply I respectfully refer you to my letter to Governor Vance, bearing date January 26, 1844, on file in the papers touching the claim of Captain J. B. Estes, in the House of Representatives. That letter contains all the evidence I can give on the subject.

Very respectfully and truly yours,

HENRY DODGE.

Hon. J. LETCHER,  
*House of Representatives.*

*To the honorable the Senate and House of Representatives of the  
States of America in Congress assembled :*

The petition of James B. Estes, of the county of Iowa, and Territory of Wisconsin, respectfully represents, that he has resided in the Territory from the year 1828 until the present time; that in the spring of 1832, upon the breaking out of hostilities with the S. & Fox Indians, or what is usually called the Black Hawk war, G. A. Atkinson made a requisition upon Colonel Henry Dodge to raise the forces in his power to suppress the threatened danger; and upon requisition of Colonel Dodge, your petitioner, on the 11th of May, volunteered his services for the defence of the country; and immediately, for the safety of his family, removed them from his plantation in Iowa county aforesaid, to Prairie du Chien, where he supported during the war at his own expense, while the family of almost every other settler in the country was supported during that time at the expence of the government, out of the public stores.

Your petitioner having provided a safe retreat for his family, immediately left all his business and his plantation, upon which was grown seventy-three acres of oats, which were then worth at least fifteen hundred dollars, and upon which he had also twenty-five hundred bushels of wheat in the stack, which was worth at that time at least ten thousand dollars. And your petitioner also left at his house a vast lot of household furniture; and furnishing himself with his own household equipments, provisions, arms, and ammunition, he joined Colonel Dodge and was employed during the war in carrying expresses through the country from one part to another, which was the most dangerous part of service. Your petitioner continued in this manner until the termination of the war, about the middle of August, devoting his whole energies, and means to the service of his country. Your petitioner further shows, that while he was thus engaged himself in service in the country, the mounted troops in the service of the United States quartered on his plantation, and turned their horses into his growing of oats, and foraged them upon the wheat in the stack, and literally destroyed the whole of both; the troops also destroyed all of his household furniture, which was appraised, under the direction of Colonel Dodge, at the sum of six hundred and fifty dollars.

Your petitioner further shows unto your honorable body that he never received any compensation whatever for his services, or reparation for his losses; and he humbly prays your honorable body to make him such an appropriation for his services and losses as shall be reasonable and just; and, as in duty bound, will ever pray.

JAMES. B. ESTES

JANUARY 1, 1843.

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*To the Senate and House of Representatives of the Congress of the  
States :*

The undersigned, a citizen of the State of Wisconsin, would respectfully represent that, in the year 1843, he petitioned Congress to

an act to remunerate him for a large quantity of forage furnished to the mounted volunteers who were engaged in the Black Hawk war (so called) during the campaign of 1832; he also prayed for remuneration for the loss of a horse furnished by him for the service of the United States during said campaign, and for his own services, and for the loss of household furniture and other property, used and destroyed by the troops which were, from time to time, quartered in his house and upon his premises during said campaign; that in his said petition it was stated that he had not received any remuneration whatever, from any source, for said forage, horse, services, furniture, and other property. Your petitioner would now state that, at the time said petition was written, in 1843, it did not occur to him that he had received about ninety-six dollars on account of his services, that amount being, as your petitioner believes, the sum paid to all those volunteers whose names were upon the muster-roll with his; and which sum your petitioner knows was by no means adequate to defray the expenses to which he was subjected by the duties which he was required to perform, and for the injury which was done to three of his horses which were used by himself. With the exception of the said sum of about ninety-six dollars, (more or less,) your petitioner avers that he has never yet received any remuneration whatever on account of the forage, &c., for which he claims payment.

Your petitioner would respectfully ask the attention of the Senate and House of Representatives to the petition and papers presented to Congress, in his behalf, in 1843, and also to the adverse report thereon, made by the Committee of Claims of the House, (No. 500,) on the 24th of May, 1844, together with the additional testimony which he herewith presents in support of his claim. The adverse report was grounded upon the erroneous impression that your petitioner had received payment for the forage, horse, and services alluded to in the petition of 1843, because the Third Auditor's office contained evidence that your petitioner had received about \$96 as a mounted private, \$110 for a horse delivered to Col. H. Dodge, and \$200 for forage furnished the command of Capt. James H. Gentry. But your petitioner avers, and shows by unimpeachable testimony, that his claim does not embrace the forage nor the horse mentioned in the vouchers produced by the Third Auditor. The forage embraced by the voucher in the Third Auditor's office consisted of two stacks of spring wheat, on which the petitioner did not place much value, because it was not of a good quality, and was the first forage supplied by him; the quantity and price were fixed by Capt. Gentry himself. It was used by Capt. Gentry's command some weeks before the voucher was given by Capt. Gentry, which is dated July 1, 1832. The winter wheat and oats, for which he claims payment, were furnished afterwards. The horse for which he claims payment was not "the sorrel horse delivered to Col. H. Dodge," but "a certain bright bay horse," rode by "a volunteer by the name of David Shay," which was lost while employed in the public service, as proven by the most respectable testimony.

The evidence presented by the petitioner, in support of his claim, will establish the following facts:

1. That the winter wheat used for forage by the mounted troops was

the produce of about one hundred acres of good land, well cultivated and yielding an abundant crop, which was safely harvested and stacked.

2. That the field of oats contained upwards of seventy acres, and was a handsome crop.

3. That the mounted and other troops in the service of the United States were quartered, from time to time, upon the premises of your petitioner, from the commencement to the termination of the campaign, with directions from the commanding officer to use the wheat and oats.

4. That all the said wheat and oats, and also a number of beehives, were taken and used, and thus lost to your petitioner.

5. That by the use and occupation of his house by said troops, your petitioner suffered a heavy loss in the damage and destruction of household furniture.

To the credibility of the persons who have given their testimony in relation to the claim of your petitioner, he would respectfully refer to the Hon. Henry Dodge, the Hon. A. C. Dodge, and the Hon. Geo. W. Jones, who are personally acquainted with the deponents.

Your petitioner would beg leave to state, that the "wheat in shock," spoken of in the deposition of Capt. W. Davidson, consisted of a quantity of sheaves that had been taken from the stacks for horses of volunteers; and not having been all used at the time they were removed from the stacks, were placed in the shock to preserve them better from the weather.

When your petitioner removed his family in the spring of 1832, for safety, to Prairie du Chien, he left his premises, embracing his barn and its contents, his fields, his grain, and his animals, in the charge and care of Mr. Andrew M. Whitaker, who had been for some time in the employ of your petitioner. He is a man of irreproachable character, and your petitioner refers your honorable bodies to his depositions touching the quantity of forage consumed by the troops, and to the facts in the case, he having remained upon the premises, as your petitioner believes, during the whole of the campaign.

The adverse report made in 1844, above alluded to, expresses doubt as to the honesty of the claim of your petitioner, because he delayed to present it until 1843; because he did not urge it at the time he received pay for the horse, wheat, and service referred to in the voucher in the Third Auditor's office; and because his crop of wheat, harvested and stacked in the summer of 1831, remained in the stack until the spring and summer of 1832, when wheat and flour were so very dear. In reply to these unjust suspicions your petitioner would remark, that for the spring wheat, the horse, and the service for which he was paid, he was so fortunate as to have the benefit of vouchers which were in proper form to insure the payment on presentation, showing the indebtedness of the government to your petitioner for specific and defined amounts and things; which was not the case in regard to the wheat, field of oats, the horse rode by the volunteer Shay, the furniture in his house, &c., for which he deemed himself entitled to remuneration. He was informed, and he believes, that no officer of the government would allow his claim unless a voucher in proper form could be presented, exhibiting the quantity of forage, &c., actually used for public service, and obtained under the proper authority; and he

ld that his claim was of such a nature that it must be obtained through special act of Congress. He was not aware of the nature of the proofs necessary to aid his claim before Congress, and the delay in presenting it may be attributed to his utter destitution of means after the Black Hawk war, to the constant and harassing necessity of devoting his whole time to the support of his family, and to the depressing influence which was produced upon his mind and activity by severe rheumatism, which afflicted him for several years after the close of that war. And your petitioner would further state, that the present period is the only one, since the year 1833, that he has found himself in circumstances that enabled him to visit the seat of government and attend to his claim. Your petitioner would further state, that he did not thresh out his crop of winter wheat, which was harvested and stacked in 1831, because he believed it would remain more safely in the stack than in any other way, he having no barn or granary at that time, and did not desire to thresh out his wheat until a grist-mill, which was commenced by a Mr. Kendall, about twenty-two miles from the residence of your petitioner, should be completed, and thereby enable your petitioner to get his wheat floured, for at that period there were no grist-mills in that part of the country where your petitioner resided. Your petitioner may add, that he could not, in 1831, thresh out his wheat without great expense and waste, even if he had wished to do so, for the reason that his threshing-machine was incomplete, and it would have required several months to obtain the necessary parts to render it useful. The adverse report would also seem to intimate that the claim of your petitioner was delayed in order to render it difficult to obtain proof against it. Your petitioner would respectfully submit to your honorable bodies, in view of the testimony presented by him, and of the honorable character and reputation of the citizens to whom he refers, there is any danger that the public treasure will be wronged by a just decision, founded on the evidence presented. If he had deemed it necessary, he could have obtained a large number of depositions from citizens who have a personal knowledge of the facts on which his claim is founded; but he believed that the testimony of the commanding officer, of officers who were with their commands quartered on his premises, and of the citizens who had charge of the premises and property, the credibility of one of whom can be questioned, was abundantly sufficient; and your petitioner could not bring himself to think that the Congress of the United States would, on a bare and unfounded suspicion, extend to his claim the illiberal principle of a statute of limitation.

Your petitioner would respectfully represent to your honorable bodies, that his premises were selected by the commanding officer for the rendezvous, and for the recruiting of the mounted volunteers, because it was a good point from which the movements of the Indians could be watched and met; but mainly because it was the only place within the mining district where a large quantity of forage could be obtained. The country east of the mining settlement was a wilderness, occupied by hostile Indians, whence they continued to send their war parties into the settlement, until they were driven north and rendered harmless at the battle of the Bad Axe; and your petitioner verily believes that the expense to the government of purchasing and transporting the ne-

cessary quantity of forage to his residence, where it was wanted for the use of the horses, would have been greater than the amount which he claims to be due him for the wheat and oats obtained from his farm for that purpose.

Your petitioner fully recognises and admits the correctness of the principle advanced in the adverse report to which he has alluded, that "the most obvious, distinct, and well-established ground, recognised by this as well as by all other civilized nations, is, that when the private property of the citizen has been taken and used by the nation for the common purposes of all, and, in consequence of such employment, it has been destroyed or endamaged, the government of the nation is bound to make good the loss. This principle was, in the early history of our government, deemed so sacred and so just, that it was incorporated into one of the amendments of the federal constitution, where it is, in terms, provided that no private property shall be taken for public use without just compensation." It is this sacred and just principle that your petitioner desires to have applied in his case.

Your petitioner is now present for the purpose of urging his claim, and his circumstances are such that he is compelled to beg of your honorable bodies a prompt examination and decision in his case. And your petitioner, as in duty bound, will ever pray.

JAMES B. ESTES.

Subscribed and sworn to before me this 30th day of December, 1852.  
J. W. BECK, J. P.



TERRITORY OF WISCONSIN, *county of Iowa, ss:*

I, William Davidson, being duly sworn, depose and further saith, that he was well acquainted with James B. Estes from the year 1829 until the present time; that he, the said Estes, lived in the vicinity of Dodgeville, in the present Territory of Wisconsin, and that he had improved an extensive farm; that in the summer of 1831 he had harvested a large crop of winter wheat, which was standing in stacks, at the breaking out of the Sac and Fox Indian war, in the spring of 1832, which was considered worth one dollar and twenty-five cents per bushel, to deponent's own knowledge, and a large crop of oats sown that spring. The company from Platteville, at that time under my command, was ordered to the farm of said Estes to recruit and rest our horses. After a few days we were ordered to march. I was there several times afterwards, and found the grain was used or destroyed by the troops from the mines and Illinois, ordered there to recruit their horses. Deponent further saith that in the season of 1832, the average price of flour in Galena, fifty miles south, the only place it could be had, was from eight to fifteen dollars.

W. DAVIDSON.

Sworn and subscribed to before me, an acting justice of the peace in and for said county and Territory, this 23d day of January, A. D. 1843  
M. MEEKER, J. P.

James H. Gentry, being by me duly sworn, deposeth and saith, that he has been well acquainted with James B. Estes from the year 1828 to the present time; that he, the said J. B. Estes, lived in the vicinity of Dodgeville, in the present Territory of Wisconsin; that he had improved an extensive farm; that in the summer of 1831 he harvested a large crop of winter wheat, which was standing in the stacks at the breaking out of hostilities with the Sac and Fox Indians, in the spring of 1832. Deponent further saith, that he commanded a company during the war, and by order of Colonel Dodge, who then commanded the troops of the mining district, he was frequently sent to the farm of the said James B. Estes, for the purpose of recruiting the horses. Deponent further saith, that grain of all kinds bore a very high price at that time, and that the horses belonging to the service were fed on the wheat from the stacks then standing on the premises of the said Estes, of which there were a large number. Deponent further saith, that the said Estes was absent from his farm during the whole of the war; that he was actively engaged in procuring horses and arms for the service, and in the carrying of expresses, from the commencement to the termination of the war, thereby rendering great service to his country.

JAMES H. GENTRY,

*Late Captain.*

Subscribed and sworn, this 4th day of January, 1844.

NATHAN OLMSTED, J. P.

TERRITORY OF WISCONSIN, county of Iowa, ss:

Andrew Whitaker, being by me duly sworn, deposeth and saith, that he has been well acquainted with James B. Estes from the year 1828 to the present time; that he, the said J. B. Estes, lived in the vicinity of Dodgeville, in the present Territory of Wisconsin; that he had improved an extensive farm; that in the summer of 1831 he harvested a large crop of winter wheat, which was standing in the stacks at the breaking out of hostilities with the Sac and Fox Indians, in the spring of 1832. Deponent further saith, that he was at said farm, previous to and during the Indian war, frequently, and saw great numbers of horses, even in the service of the United States, fed upon the wheat taken from the stacks standing on the premises of the said Estes. Deponent further states, that there was sown on said farm, in the spring of 1832, seventy-five acres of oats, and, when said oats were nearly matured, a large number of horses that were then in the service were turned in to said oats promiscuously, in consequence of which the whole crop was entirely destroyed. In regard to the wheat crop, it was large. I am well acquainted with farming in all its various branches, and from the number of acres which were seeded, and from the great yield which followed, I could not estimate it at less than *two thousand five hundred bushels*, and I verily believe that it would have turned off *three thousand bushels*, the whole of which was destroyed and used by the troops quarantined upon the premises. In regard to the crop of oats, I would state that the land was very good upon which they were sown, and well cul-

tivated; and, at the time the horses were turned in, they were full headed out, and looked very promising. I should think that *thirt* bushels to the acre would be a very moderate estimate. Deponent further saith, that grain of all kinds bore a very high price at that time in the country. Deponent further saith, that he knew of a great many sales of oats and wheat from 1832 to 1834. Oats sold readily at seventy-five cents per bushel, and wheat at one dollar and a quarter per bushel. Deponent further saith, that said Estes had a large quantity of valuable furniture, all of which was destroyed by the troops then quartering at the house, which deponent verily believes was not worth less than six hundred and fifty dollars. Deponent further saith, that said Estes had about twenty stands of bees, all of which were destroyed by said troops, as well as all his garden vegetables and a large quantity of fowls. In fact, the whole place was completely robbed of everything valuable upon it. The damages, independent of the grain, could not have been less than one thousand dollars. Further this deponent saith not.

ANDREW WHITAKER.

Sworn and subscribed before me, this 9th day of January, 1844.

WM. HENRY,

*Justice of the Peace, Iowa county, Wis. Ter.*

TERRITORY OF WISCONSIN, *county of Iowa, ss :*

Andrew Whitaker, being by me duly sworn, deposeth and saith, that he was well acquainted with a certain bright bay horse, about sixteen hands high, and well proportioned, owned by James B. Estes, of the Territory and county aforesaid; that, at the breaking out of hostilities with the Sac and Fox Indians, said horse was furnished by said Estes to a volunteer by the name of David Shay, then in the service of the United States, commanded by Colonel Henry Dodge; that he saw said Shay receive said horse, and left Mineral Point, in said county and Territory, as was said, on an expedition to Rock river, in the State of Illinois. On the return of the troops, said Shay informed this deponent that said horse was lost during the trip, which was confirmed by others belonging to the company. Deponent further saith, that said horse was worth, at that time, not less than one hundred and twenty-five dollars. Further this deponent saith not.

ANDREW WHITAKER.

Sworn and subscribed before me, this 9th day of January, 1844.

WILLIAM HENRY,

*Justice of the Peace, Iowa county, Wis. Ter.*

TERRITORY OF WISCONSIN, *county of Iowa, ss :*

Thomas Jenkins, being by me duly sworn, deposeth and saith, that <sup>1</sup> was well acquainted with a certain bright bay horse, about sixteen hands high, and well proportioned, owned by James B. Estes, of the Terr



tory and county aforesaid; that, at the time of the breaking out of hostilities with the Sac and Fox Indians, a volunteer by the name of David Shay rode the above-described horse, and used him in the service of the United States; said Shay belonged to a company commanded by Captain James H. Gentry, which company belonged to the regiment commanded by Colonel Henry Dodge; said Shay rode said horse on an expedition to Rock river, in the State of Illinois. On that trip five or six horses were lost, supposed to have been stolen by the Indians, and among them the above-described horse. Deponent further saith, that he was one of fifteen or sixteen detailed to pursue said horses, and followed on the trail some fifteen or sixteen miles, to Rock river, where it was ascertained that the horses had crossed over, and the pursuit was abandoned. Deponent further saith, he believes said horse to be worth one hundred and twenty-five dollars. Further this deponent saith not.

THOMAS JENKINS.

Sworn and subscribed before me, this 9th day of January, 1844.

WILLIAM HENRY,

*Justice of the Peace, Iowa county, Wis. Ter.*

STATE OF WISCONSIN, *county of Grant, sct:*

I, Andrew M. Whitaker, of lawful age, and being duly sworn according to law, do say, on oath, that I am a resident of the county of Lafayette, in the said State of Wisconsin; that I am acquainted with Capt. James B. Estes, and have known him for the last twenty-five years; that I resided with the said Captain Estes from the year of our Lord one thousand eight hundred and twenty-eight to the year of our Lord one thousand eight hundred and thirty-three; that during that time the said Captain Estes resided about three miles from what is now known as the village of Dodgeville, in the county of Iowa, in said State of Wisconsin, and at his said place of residence the said Captain Estes made an improvement of lands during the years of our Lord one thousand eight hundred and twenty-nine and one thousand eight hundred and thirty, which was broken by the plough, and put under fence, to the amount of two hundred and twenty acres. I say, further, that in the fall of the year of our Lord one thousand eight hundred and thirty the said Captain Estes sowed upon said improved lands possessed by him one hundred acres of fall or winter wheat; that said wheat grew to an excellent and very heavy crop, and was harvested and stacked by the said Captain Estes in the summer of the year of our Lord one thousand eight hundred and thirty-one, within the said enclosed lands; that said crop of wheat was among the best I have ever seen, and would, as I verily believe, average as high as thirty-five bushels to the acre, making the entire crop of said wheat amount to three thousand and five hundred bushels in all; that all of said wheat remained in stack, on said enclosed lands, from the time it was stacked, as aforesaid, until about the month of June, or the month of July, in the year of our Lord one

thousand eight hundred and thirty-two, complete and in good sound condition.

I further say, on oath, that during the summer of the year one thousand eight hundred and thirty-two the several companies of Captain James H. Gentry, and Capt. John H. Rountree, and Captain Clarke, belonging to the squadron of Col. Henry Dodge, and the company of Capt. James Craig, belonging to the division of Col. James Strode, of Jo Daviess county, Illinois, and the brigades of General Henry and Gen. Alexander Posey, of Illinois, all engaged in the Black Hawk war, as it was generally termed, were all camped and quartered at and near the said improvement of said Captain Estes, and remained there for a considerable number of days, from time to time, during said summer of the year one thousand eight hundred and thirty-two, and fed and recruited their horses upon the wheat so stacked as aforesaid; and that the said companies and brigades fed, used up, and destroyed all of the said wheat, so that none remained to the said Captain Estes which was fit to use, or of any value, after the said companies and brigades had left the said premises.

I further say, that during the month of May, in the year last aforesaid, the company of Captain Gentry aforesaid fed and used up two stacks of spring wheat belonging to said Captain Estes on the same improvement, which two stacks have been paid for, as I understood from the said Captain Estes.

I further say, on oath, that in the spring of the year of our Lord one thousand eight hundred and thirty-two the said Captain Estes sowed about seventy-three acres of oats upon the same enclosed improvement before spoken of, which were all consumed and eaten up and destroyed, by the aforesaid companies and brigades, at or about the time the same were getting ripe, in the summer last aforesaid; that said oats would yield at least forty-five bushels to the acre. I further say, that oats were worth, in the spring of the year last aforesaid, at the place where said oats were destroyed, one dollar per bushel, there being but very few to be had in the surrounding country; and, further, that I cannot say what wheat was worth the summer of the year the said winter wheat was destroyed, as aforesaid, but that I know that flour was worth at least ten dollars per barrel, and was not sold for less during the season of said destruction.

I further say, that the said Captain Estes owned a large number of hogs (I believe about the number of three hundred) at the place of his said improvement, a large number of which were killed and consumed by the soldiers belonging to the aforesaid companies and brigades, though the number consumed is not known to me; and that said soldiers also consumed, eat up, and destroyed a large number of bee-hives belonging to said Captain Estes, at the same place.

his  
ANDREW M. + WHITAKER.  
mark.

STATE OF WISCONSIN, *Grant county, ss:*

Be it remembered, that on this twentieth day of November, in the year of our Lord one thousand eight hundred and fifty-two, before me, William R. Biddlecome, a notary public of the State aforesaid, residing in said grant county, personally appeared the above-named Andrew M. Whitaker, and before me signed the foregoing affidavit to which his name appears, and made oath that the same is correct and true of his own knowledge; and I certify, that the name which appears at the end of said affidavit was written by me at the direction and request of said Whitaker, and that the mark which appears therewith was made by said Whitaker in my presence; also, that I know the said Whitaker, and that I believe his statements are reliable and true, and that he is a man of good character and standing in the community in which he resides.

[L. S.] In testimony of which, I have hereunto set my hand and seal of office, this 20th day of November, A. D. 1852.

WM. R. BIDDLECOME,

*Notary Public.*

STATE OF WISCONSIN, *county of Grant, ss:*

I, William Davidson, of lawful age, and being duly sworn according to law, do say, on oath, that I am a resident of the county of Grant, in the said State of Wisconsin; that I am acquainted with Captain James B. Estes, and have known him for the last twenty-three years; that I served as a first lieutenant in the company of Captain John H. Rountree, in the Black Hawk war, in the year of our Lord one thousand eight hundred and thirty-two, and also as a private in the company of Captain James Gentry, in the same year and in the same war; that in the month of June, in the year last aforesaid, I was in the command of Captain Rountree's company aforesaid, (he then being absent,) and was commanded by Colonel Henry Dodge to go and take up quarters at the farm of the said Captain James B. Estes, which was near what is now the village of Dodgeville, in the county of Iowa, in said State of Wisconsin, for the purpose of recruiting the horses and men of said company, of which I had charge; that when we arrived at said Estes's, the said Captain Estes had a very large field of winter wheat, which had then been stacked in part, and part of which was in shock, and a small quantity was threshed; that the said Captain Estes had an enclosure of about two hundred acres; and that there was, beside the said wheat, a very large field of oats, which was not then ripe, into which the men belonging to said Rountree's company turned their horses to feed.

I further say, that at the time I left said place of quartering the said wheat was nearly all destroyed, and that I understood afterwards, from other soldiers, that the whole of it was entirely used up and consumed; also, that the entire field of oats was used up and destroyed. I further state, that in my opinion there were about seventy acres of the

said oats, and that the said crop would yield about sixty bushels per acre, as I verily believe. I also say, that during the said year last aforesaid, at the place where said oats were destroyed, not less than one dollar per bushel; and further, that the said wheat was wheat of the previous year's raising, and that the same was in good marketable condition at the time it was taken and destroyed, and of the very best quality, as I believe.

I further say, on oath, that I am acquainted with Andrew Whitaker, whose affidavit has this day been made and taken before William R. Biddlecome, a notary public, upon the same subject as this my affidavit; that I saw the said Whitaker at the time of the consumption of the said wheat and oats, as herein given by me, and by him in his affidavit, which I have heard read; that I have known him since the said time, and that he is a man of good character and standing, and worthy of all credence; and that he is the son whom I saw at the said place of our quartering, and whose name is hereto attached.

W. DAVIS

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STATE OF WISCONSIN, *Grant county*, ss:

Be it remembered, that on this twentieth day of November, 1855, of our Lord one thousand eight hundred and fifty-two, before William R. Biddlecome, a notary public of the State aforesaid, in and for the said county of Grant, personally appeared the above-named David Davidson, whose name appears to the foregoing affidavit as the son, who is personally known to me to be the same person who dictated the foregoing affidavit, and before me made oath that said affidavit is correct and true of his own knowledge; and I testify, that I have known the said Davidson for many years, and believe him to be a man of good character and standing, and his statements are worthy of all credence; and I further certify that said affidavit hereto attached, and signed by Andrew M. Whitaker, the same one alluded to by said Davidson in his affidavit above, the same was attached, as it now appears, by me, in the presence of said Whitaker and the said Davidson.

[L. s.] In testimony of all which, I hereto set my hand and seal the day aforesaid.

WM. R. BIDDLECOME,  
Notary

STATE OF WISCONSIN, *Iowa county*:

On this 16th day of November, A. D. 1852, personally appeared before me, Charles F. Legate, a notary public in and for the State aforesaid, Joseph B. Hunter, who, being duly sworn, declares that he is well acquainted with James B. Estes, and the farm on which said Estes lived, situated in Iowa county, in the Territory of Michigan, in the year A. D. 1832. He further declares, that he was in the service of the United States, in the Black Hawk war, in the said year of A. D. 1832, and was quartered at the farm of Estes with horses in the service of the United States, and fed out of the wheat of said Estes to feed the horses with. The number of horses he cannot recollect, but composing an efficient company.

JOSEPH B. HUNTER.

[L. s.] Sworn and subscribed to before me, this 16th day of November, A. D. 1852.

CHARLES F. LEGATE,  
*Notary Public, Wisconsin.*

MINERAL POINT, *November 16, 1852.*

DEAR SIR: At your request, I hereby certify that I was at your place in the summer of 1831; that I observed that you had a large field of wheat, as I supposed, from eighty to one hundred acres; that it appeared to be of fine quality and a large yield; that I afterwards observed a number of large stacks of wheat on your premises—some dozen or twenty, number not now recollected; that you gave me as a reason for not having it threshed the following winter, that you could not get your threshing to work. I was not at your place during the Sac and Fox war, and know only from hearsay what became of it.

It may, perhaps, be as well to say, that the wheat-field above mentioned was situated, as I believe, on the east side of township six, or range two east, in the Mineral Point land district.

Your obedient servant,

J. B. TERRY.

I further certify, from my own books and recollection, that flour in the summer of 1832 was worth, at this place, ten dollars per barrel.

J. B. TERRY.

Capt. JAMES B. ESTES.

Subscribed and sworn to before me, this 19th day of November, A. D. 1852.

CHARLES F. LEGATE,  
*Notary Public.*



## BOOKS ORDERED BY CONGRESS.

**JUNE 10, 1854.**—Laid upon the table, and ordered to be printed.

**Mr. CHANDLER, from the Committee on the Congressional Library, made the following**

## REPORT.

The House Committee on the Congressional Library, to whom was referred the resolution of the House of the 21st December, 1853, calling for information relative to books ordered by Congress, but which are not yet completed, beg leave to report their action under that resolution, and the information which they have obtained.

HOUSE OF REPRESENTATIVES,  
Washington, December 21, 1853.

DEAR SIR: Accompanying please find a resolution which the House of Representatives have just adopted. Will you do me the favor to request from all persons engaged in preparing books for Congress, under direction of the Library Committee, an explicit statement of the situation of their contracts, in conformity with the resolution of the Hon. Mr. Orr.

Very truly, your friend,

**JOS. R. CHANDLER.**

EDWARD B. STELLE, Esq.,  
*Assistant Librarian of Congress.*

THIRTY-THIRD CONGRESS, FIRST SESSION—CONGRESS OF THE U. STATES.

IN THE HOUSE OF REPRESENTATIVES,  
Wednesday, December 21, 1853.

On motion of Mr. James L. Orr,  
*Resolved*, That the House members of the Joint Committee on the Library be instructed to inquire and report what books have been ordered to be printed by authority of Congress, which have not been completed; the progress made with the respective works; the time when they will probably be completed; the names of the contractors, and the works each one is to print; the contract price stipulated to be paid for editing and publishing; and such other facts as may inform the House fully upon the subject.

**Attest:**

JNO. W. FORNEY,  
*Clerk House of Representatives U. S.*

LIBRARY OF CONGRESS, *February 9, 1854.*

SIR: In conformity to your request, copies of the resolution of the House of Representatives, passed 21st December, 1853, instructing the committee, on the part of the House, "to inquire what books have been ordered to be printed by authority of Congress, which have not yet been completed," &c., accompanied by a letter containing queries on the various points of information desired by the House, have been sent to the following gentlemen:

Messrs. Little, Brown & Co., Boston, Mass.; Professor H. Washington, Williamsburg, Va.; Messrs. Gales & Seaton, Washington city; Captain Charles Wilkes, Washington city; Colonel Peter Force, Washington city; Professor J. Henry, Washington city.

Answers, herewith enclosed, have been received from all.

I have the honor to be, with great respect, your obedient servant,

EDW. B. STELLE,

*Assistant Librarian.*

HON. JOSEPH R. CHANDLER,

*Chairman of the Library Committee of the House of Reps.*

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*Work of the exploring expedition not completed—quarto.*

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<i>Mammalia and ornithology.</i> —A reprint, by John Cassin, of Philadelphia. Contract, \$3,000; \$1,415 66 paid.	Nearly ready for press; colored plates; folio. 45 plates engraved—30 to be engraved. Finish in two years.
<i>Hydrography</i> , 2 vols.—Captain C. Wilkes, Washington.	In press—one-third printed. Two great classes of charts, 234 charts on 120 plates. Vol. 1 (charts) published; vol. 2 (charts) ready to print. Eight months.
<i>Botany</i> , ( <i>Ferns.</i> )—Brackenridge, Washington.	In press—half printed. 44 plates, folio, all engraved. Eight months.
<i>Ichthyology.</i> —Prof. Agassiz, Cambridge, Massachusetts. Contract, \$6,000; \$3,500 paid.	Preparing for press; colored plates, folio. 31 plates engraved—88 to be engraved. Drawings nearly all done. The Professor is ill. No time.
<i>Crustacea</i> , 2 vols.. 13 and 14.—Prof. Dana, New Haven, Connecticut.	Published. 96 plates, folio, colored, all engraved. Printing and coloring of plates to be done. Nine months.
<i>Mollusca and Shells.</i> —Dr. A. A. Gould, Boston, Massachusetts.	Published. Plates engraved. 51 plates, folio, colored. Printing and coloring of plates to be done. Twelve months.
<i>Geographical distributions of animals and plants.</i> —Dr. Pickering, Boston, Massachusetts.	150 pages of introduction printed. The body of the work is preparing for press. Four maps, colored, engraved. Eighteen months.
<i>Botany</i> , 2 vols.—Dr. A. Gray, Cambridge, Massachusetts. Contract, \$7,000; \$4,680 paid. Dr. Torrey, Princeton, New Jersey.	In press—one-fourth printed. 120 plates, folio, part colored. 85 plates engraved—35 to be engraved. Twelve months.



Baird, Washington.	Ready for press. 20 plates, folio, colored; drawings nearly all done. Plates to be engraved. Twelve months.
Bailey, West Point; Mosses, ; Fungi, Curtis, South Carolina, Tuckerman, Boston.	Ready for press, except the mosses. 38 plates, folio, colored. 24 plates to be engraved. Twelve months.
Bonte, New York.	Ready for press. 8 plates, folio, colored; to be engraved. Twelve months.

rinter, Philadelphia, 42½ cents per 1,000 ems; the regular additional rates for images, tables, figure and rule work, alterations, &c.; 75 cents a token for only printed.

Book-binder, Philadelphia, \$4 a volume, Turkey morocco, extra gilt, gilt edges, same, Turkey backs and corners, for the large atlases, folio.

Printer, Philadelphia, paper warehouse, 20 cents a pound for extra linen paper, 25 cents a pound for extra linen drawing or plate paper, extra size, made extra work.

Printing, drawing, engraving, text and plate printing, paper of all kinds, &c.	\$34,246 62
.....	5,600 00
Not paid.....	6,404 00
	<u>46,250 62</u>

Amount of salaries, expenses of keeping the national gallery, green-house, and contingencies.....	<u>\$8,260 00</u>
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Expenses decrease as the work is completed.  
 Pension of Captain Wilkes:

J. DRAYTON,  
*Superintendent of Illustrations and Printing.*

January 17, 1854.

WASHINGTON, January 13, 1854.

In acknowledgment of your letter of the 12th instant, written by the Library Committee, we have the pleasure to state that, in relation to the publication of the Annals of Congress, confided to the high authority, we have just completed the "Annals" from the First Congress to the close of the Twelfth. According to a resolution of Congress, passed at the second session of the First Congress, and the provision contained in an act of Congress, September 30, 1850, the entire work is "to extend to the second session of the Eighteenth Congress, when the Register of Debates

shall be the "probable number of volumes to complete the Annals" will depend in some degree upon the extent of the work which they may comprise. It is probable, however, that the work will be from twelve to fifteen volumes—the smaller number being the probable.

At the time the work will be completed," we have to state that it is not believed that it will be completed within thirty months from the present date.

As to the cost per volume of said work, for printing, paper, and the price thereof will be found to have been prescribed in

the joint resolution before referred to, and also in the provision of the act of Congress of September 30, 1850—to wit, at the rate of \$5 per volume.

Yours, very respectfully,

GALES & SEATON.

EDWARD B. STELLE, Esq.,  
*Assistant Librarian to Congress.*

WASHINGTON, *February 15, 1854.*

SIR: In reply to the inquiries contained in your letter of the 13th of January, requesting certain information for the Library Committee, I have to state—

1. The whole number of volumes of the American Archives is limited to twenty.

2, 3, 4. The work is paid for at the rate of one cent and seven mills per page, so that the cost of each volume depends upon the number of pages it contains. There is no separate charge for editing the work or collecting the materials for it. The contract price of one cent  $\frac{7}{10}$  per page, on the delivery of the volume, includes every expense for procuring the materials and editing the work, and for printing, paper, and binding.

5. Nine volumes have been delivered; but it is proper to add, that fifteen volumes might have been completed, had its regular progress not been impeded by irregularity in the appropriations for it, and by other difficulties, delays, and interruptions, over which I had no control, and are such that it is impossible to say when the work will be completed.

Very respectfully, &c.,

PETER FORCE.

E. B. STELLE, Esq.,  
*Assistant Librarian, Capitol.*

Boston, *January 3, 1854.*

DEAR SIR: Agreeably to your request, we beg to state as follows: The contract price for the works of John Adams, to Congress, is \$2  $\frac{25}{100}$  a volume. The last volumes are expected to be ready for delivery in the autumn of this year. We may also state that seven volumes have already been delivered and paid for, and that vol. 9 will be delivered in the course of a few weeks. This will leave vols. 10 and 1 to be delivered.

We are, respectfully, yours,

LITTLE, BROWN & CO.

EDWARD B. STELLE, Esq.,  
*Washington, D. C.*

WILLIAMSBURG, January 2, 1854.

MR: I received by the mail of this evening your letter, propounding me, as the editor of the Jefferson papers, a series of questions, to which I beg leave to respond in the order in which they are propounded.

. "How many volumes, of the size of the first volume, will it require to complete the work?"

To this question I can only return a *conjectural* answer. The matter aiming to be published is partly in print and partly in manuscript. The manuscript is also very unequal. Under such circumstances, it is impossible to say, with certainty, of how many volumes the whole work will be comprised. The publishers and myself have, however, estimated the number at *eight*, and we shall endeavor to compress the publication within this compass.

. "What progress has been made in the work?"

The fourth volume has been completed, all except the binding; and about half the fifth volume has been printed.

. "What is the price stipulated to be paid to you for editing the work?"

The price stipulated to be paid to me is six dollars per day for all work performed in Virginia, and eight dollars per day for all work performed elsewhere. The additional two dollars, paid when the work takes me to New York or Washington, is to cover the expenses which necessarily incident to the trips.

. "About what time will the last volume be published?"

I have just received a letter from the publisher, promising that the publication shall be pushed with all possible speed. The whole of the matter to be published is already in his hands. My hope and expectation is, that the work will be completed by June or July.

Having now replied to all your inquiries, I have only to remark, in conclusion, that the mass of manuscript which came into my hands was very large, and that my duties in connexion with it were not only to select such portions as were worthy of publication and edit them, but also to select, arrange, and index all such papers as were worthy of preservation, in order that they might be deposited among the national archives; and, in discharge of this latter branch of my duty, some one hundred and twenty-five volumes of manuscript have been selected, arranged, indexed, and are now nearly ready for the covers of the binder—leaving in my hands a mass of refuse matter, nearly twice as great as that which has been selected, for preservation among the national archives, and which will be placed at the disposal of the Library Committee.

Most respectfully,

H. A. WASHINGTON.

EDWARD B. STELLE, Esq.

gress, does not appear to come within the scope of the resolution communicated. There is no contract for the *printing* or *publication* of a catalogue by the Smithsonian Institution. Under the authority of Congress an arrangement has been entered into by the librarian of Congress and the secretary of the Smithsonian Institution, for the *printing* and *stereotyping* of a catalogue, for the purpose of being printed and published at such times and in such numbers only as occasion require and as the Library Committee may direct.

"It is impossible to estimate with accuracy, or even with an able approximation to accuracy, 'the probable number of volumes (600 pages each) to complete the catalogue of the Library of Congress'.

"The present contents of the library are not known to me. When an arrangement between the Library Committee and the Smithsonian Institution was under consideration, the number of volumes was estimated to be about 12,000. It is now, perhaps, two or three times as large. It has been stated that, within a year, the number may reach nearly 50,000.

"There is, as yet, no order for the printing of the catalogue, and there has been no determination as to the size of page, whether folio, quarto, or octavo.

"The best data which I have for an estimate of the probable number of pages in a catalogue of the Library of Congress, when it shall contain, say 50,000 volumes, are as follows:

"The catalogue of the Bodleian library, at the time when it contained about 200,000 volumes, fills 4,641 pages in double-column format; or, say, 9,282 pages in quarto, and about 800 pages in octavo; or say, in all, 10,082 pages in folio double columns.

"At this rate, 50,000 volumes would require about 1,250 pages in octavo, or, if one page of folio be equal to four pages in octavo, 5,000 pages in folio. At 600 pages to the volume the catalogue would make 30,000 pages.

about four times as many pages, or 3,400; which, at 600 pages to a volume, would make 5 $\frac{2}{3}$  volumes.

"The greater number of volumes in the Bodleian catalogue may be owing to the greater proportion of pamphlets in the Bodleian library, the titles in that catalogue do not appear to be longer than those prepared for the Library of Congress.

"But any estimate of this sort is extremely uncertain. The system of cataloguing may make one part of a library a bad representative of the general average, and the average will vary with the continued or omitted faithfulness of the registration.

"It may be possible to find what purports to be a catalogue of 20,000 volumes, in a book of 100 pages; and it is *possible* that 20,000 volumes might be selected from the mass of literature, which could be adequately catalogued within that number of pages, of such type and style as we use. But, as a general thing, a catalogue of 20,000 volumes compressed into 100 pages would be utterly useless.

"I have just received a copy of the catalogue of the library of the Cambridge High School, in Massachusetts. It is a handsomely printed volume of 239 pages large octavo. It is prepared with admirable accuracy and skill by a very learned and accomplished bibliographer. This is the catalogue of a library of only 1,600 volumes. At that rate, the Library of Congress, if it contained 50,000 volumes, would require a catalogue of about 12 volumes in 8vo., of say 600 pages each.

"A catalogue must be expected to increase in size with the increase of the library; as the ledger and inventory book of the merchant swell with his expanding business and advancing prosperity. Any inconvenience which might be supposed to arise from the bulk of the catalogue (however voluminous) is most readily and satisfactorily obviated by an index of subjects, like that in preparation for the Library of Congress.

"It will be impossible to reply to the interrogatories of Mr. Stelle in their relation to the instructions of the committee under the resolution of the House of Representatives. As no printing, paper, or binding have been contracted for, (nor the quantity and quality of each determined,) the elements for calculating their cost do not exist. I would remark, however, that it has not been supposed that one-third the number of copies mentioned by Mr. Stelle would be likely to be ordered at any one time. This is a very important consideration in connexion with the Smithsonian plan, that it renders practicable the limiting of the edition published to the exact number of copies wanted for immediate use; inasmuch as the catalogue can at any time be reprinted, with all additions incorporated, for the mere cost of paper and press-work, with that of preparation and stereotyping of the *new* titles. On this account, the economy of this plan to the Library of Congress would, in a few years, be very conspicuous, even if the first cost and the size of the catalogue were twice what we have any reason to expect that they will be. The great benefits to be reaped by other libraries, without impairing these advantages to the Library of Congress, are worthy to be borne in continual remembrance.

"It may be proper to state here such facts relative to the arrangement between the Smithsonian Institution and the Library of Congress, and

to the progress of the work conducted in pursuance of such a ment, as may be of interest to the Library Committee.

"The agreement requires that the Smithsonian Institution shall charge of the work, and that the secretary shall certify to the Committee for payment, all bills for labor and materials.

"The work was partially commenced about the middle of June, not with our full present force till the first of October. The following table shows the names of the persons employed on the work, the time of service rendered, and the stipulated compensation :

Professor Wm. E. Jillson, cataloguer, at.....	\$100 a m
Hiram Corson, jr., cataloguer, at.....	75
Chas. W. Hinman, cataloguer, at.....	50

"These gentlemen have accepted these low rates of compensation, induced by their interest in the work.

Alexander Eliot, jr., compositor, at.....	\$2 a
J. P. Cogswell, compositor, at.....	2

"This is the established price for the work of journeymen printers in this city.

Willard Cowles, stereotyper, at.....	\$90 a m
James Smith, a boy, for services in printing and stereotyping office, at.....	15

"Besides the above, I (Professor Jewett) have given about three days of my own time to the work, and generally in the evening no compensation is expected.

"I am very happy to bear testimony to the diligence of all who have been employed ; a diligence prompted and sustained by intelligent interest in the success of the enterprise. Professor Jewett has been obliged to devote nearly all his evenings to the work, in addition to the labors of the day.

"The type, press, stereotyping apparatus, fixtures of the printing stereotyping office, with rent and facilities of various kinds, are furnished free of expense by the Smithsonian Institution. All things in addition to the expenses incurred by the institution in material, plan, perfecting processes and apparatus, purchasing rights, and employing workmen. No charge is made on any of these accounts.

"The real cost to the Library of Congress is not probably more than half what it would be if the work were done at a common printing stereotyping office. The cost to Congress will doubtless be less than in procuring a stereotyped catalogue of its library by these means, than in procuring a printed catalogue of like character in any other way.

"I give below an exact schedule of the payments made from the appropriation of \$3,000, made for the catalogue at the last session of Congress :

September 1, 1853.

W. E. Jillson, cataloguer, 1½ months' pay.....	\$150 00
C. W. Hinman, cataloguer, 1½ months' pay.....	75 00
J. P. Cogswell, compositor, 27 days.....	54 00

# H. Rep. 186.

9

Smith, boy, 1 month .....	\$15 00
owles, stereotyper and machinist, 1 month .....	90 00
Total to September 1.....	\$384 00

ober 1.	
. Jillson, cataloguer, 1 month .....	\$100 00
1 Corson, jr., cataloguer, 1 month .....	75 00
. Hinman, cataloguer, 1 month .....	50 00
owles, stereotyper and machinist .....	90 00
iot, jr., compositor, 19 days .....	38 00
ith, boy, 1 month .....	7 50
urren, for materials .....	22 50
ington Br. railroad, transportation of materials .....	13 20
Total to October 1 .....	\$396 20

ember 1.	
. Jillson, cataloguer .....	\$100 00
a Corson, jr., cataloguer .....	75 00
. Hinman, cataloguer .....	50 00
owles, stereotyper and machinist .....	90 00
iot, jr., compositor .....	52 00
Cogswell, compositor .....	50 00
s Smith, boy .....	15 00
Total to November 1 .....	\$432 00

ember 1.	
. Jillson, cataloguer .....	\$100 00
rson, jr., cataloguer .....	75 00
. Hinman, cataloguer .....	50 00
owles, stereotyper and machinist .....	90 00
iot, jr., compositor .....	52 00
Cogswell, compositor .....	50 00
s Smith, boy .....	15 00
Total to December 1 .....	\$432 00

uary, 1864.	
. Jillson, cataloguer .....	\$100 00
rson, jr., cataloguer .....	75 00
. Hinman, cataloguer .....	50 00
owles, stereotyper and machinist .....	90 00
iot, jr., compositor .....	54 00
Cogswell, compositor .....	54 00
s Smith, boy .....	15 00
	438 00
	<u>2,082 20</u>

"There remains, therefore, nearly a thousand dollars of the appropriation unexpended.

"The only bills remaining unpaid are as follows:

Franck Taylor's bill for stationery, say about .....	\$15 00
Reed, Austin & Co., bill for materials, paid by C. C. Jewett ..	15 13
P. S. Kimon, bill for materials, paid by C. C. Jewett .....	1 25
R. Farnham for paper, say about .....	10 00
	<hr/>
Total of bills unpaid, about .....	41 38
	<hr/>

"As to the progress of the work. The number of volumes already catalogued is upwards of 6,000. It is impossible to say what average rate of progress can be expected for the future. The number of volumes catalogued in a day by one man has varied from 1 to 400, and the amount of labor and research required for the single book was as great as those for the 400.

"It is proper to remark, that the first part of this work was necessarily the slowest. The men had to learn the system and familiarize themselves with the rules. A thousand minute and troublesome details had to be considered and discussed, and precedents established.

"Again, the part of the library commenced with is by far the most difficult and irregular of the whole, and has probably required twice the amount of labor necessary for any other portion of the same extent. The average length of titles is supposed to be considerably greater than it will be in other chapters.

"Much inconvenience and loss of time have resulted from the want of a full collection of bibliographical works.

"Notwithstanding these sources of delay, incidental to the commencement of such an enterprise, the work has advanced with greater rapidity than we dared to anticipate, and every advantage which the project promised seems likely to be attained.

"I fear that my desire to give you all the information you could wish on this subject, may have betrayed me into too great prolixity in this communication. On the other hand, I am not without solicitude lest I may have omitted some detail which might be of interest to the committee. If so, I beg that my attention may be called to it, as I am very desirous that the committee should be kept informed as to the condition and prospects of the work."

Respectfully submitted:

JOSEPH HENRY,  
*Secretary S. I.*

EDWARD B. STELLE, Esq.



STEPHEN WARREN, OF NEW YORK.

JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

Mr. J. G. MILLER, from the Committee of Claims, made the following  
REPORT.

*The Committee of Claims, to whom was referred the petition of Stephen Warren, of Niagara county, New York, report:*

That the petitioner asks compensation for property destroyed by the British and Indians during the late war with Great Britain, consisting of a house and household furniture, wearing apparel, wheat, hay, &c.; and it is alleged that the property was destroyed in consequence of arms and ammunition belonging to the United States having been deposited and being in the house at the time of its destruction. The 9th section of the act of 1816 provides that any house or building "occupied as a military deposite, under the authority of an officer or agent of the United States, should be paid for, provided it shall appear that such occupation was the cause of its destruction." It appears that the petitioner and family were residing in the house destroyed at the time of its destruction, and, consequently, it could not have been used exclusively as a place of deposite for United States arms and ammunition; and the only proof upon that subject is contained in the affidavit of a single witness, who says "that there were in the said house, at the time it was burned, some United States arms and ammunition that were deposited by the United States soldiers, or by Sergeant Simons, one of the officers who had charge of them at the time they were left in said house."

The committee deem this proof insufficient to bring this case within the before-recited provisions of the 9th section of the act of 1816, for two reasons: first, the affiant says the arms and ammunition were deposited by "United States soldiers, or by Sergeant Simons." The language of the act is, "occupied as a military deposite, under the authority of an officer or agent of the United States." If deposited by the soldiers, it is necessary to show that such soldiers were "authorized agents"—that is, being "officers of the United States." The second reason is, that it does not appear, from any evidence before the committee, that such occupation as is spoken of was "the cause of its destruction;" and unless it so appear, the case is not brought within the provision of the 9th section of the act of 1816.

As to the personal property alleged to have been destroyed, the committee have only to say, that there is no provision either of the act of 1816 or 1817 which authorizes compensation for personal property destroyed under the circumstances set forth by the claimant; and the committee are unwilling to extend the law to cases not within the range of its provisions.

1. The first part of the document is a list of names and addresses of the members of the committee.

2. The second part is a list of the names and addresses of the members of the committee.

3. The third part is a list of the names and addresses of the members of the committee.

4. The fourth part is a list of the names and addresses of the members of the committee.

5. The fifth part is a list of the names and addresses of the members of the committee.

6. The sixth part is a list of the names and addresses of the members of the committee.

WOODBURY AND FOSTER.

JUNE 10, 1854.—Laid upon the table, and ordered to be printed.

Mr. J. G. MILLER, from the Committee of Claims, made the following

REPORT.

*The Committee of Claims, to whom was referred the petition of Elliott Woodbury and Ezra Foster, report :*

That it appears that the claimants, in the year 1846, were the owners of the brig "Casket," of Beverly, Massachusetts. That in the month of August of that year, and while the "Casket" was lying at anchor on the coast of Africa, she was seized by Captain Lewis E. Simonds, of the United States sloop-of-war "Marion," upon the charge that she was engaged in the slave trade. After her seizure, she was sent to the United States and delivered over to the marshal at Boston, when a libel was filed against her by Captain Simonds, in order to procure her condemnation and forfeiture.

On the trial of the libel at the December term following, it was dismissed, and the "Casket" restored to her owners.

After these proceedings were had, the owners filed their libel in the United States district court for the district of Rhode Island, in admiralty, against Capt. Simonds, in which they sought to recover damages against him for the illegal seizure of their vessel. The respondent filed his answer, and, upon the hearing, a decree was made by the court dismissing the libel without costs.

The owners of the "Casket" now ask Congress to compensate them for the losses sustained by them by reason of the seizure of their vessel. To determine the justice of their claim, the committee will very briefly refer to the facts and circumstances attending the seizure of the vessel, as disclosed upon the trial of the libel instituted by the claimants against Capt. Simonds. An appeal having been taken from the decree of the district court dismissing the libel filed by the claimants, and the opinion of Judge Woodbury having been filed with the papers presented by the claimants to Congress, in which the facts of the case, as presented in evidence, are set forth, the committee will quote such part of that opinion as will present the facts upon which the case was decided. "The vessel," (the Casket,) says Judge Woodbury, "is admitted to have been chartered at Rio, one great centre from which operations are carried on in the slave trade; also at a very high freight, as if to cover some extraordinary risk, with a crew and passengers on board who were notorious as slave dealers, and said to be consigned to

another such dealer. She was likewise bound on a voyage to that part of the African coast distinguished in the slave trade, with a cargo usual in such enterprises, and an unusual quantity of rice and farina, unless for more persons than her crew and passengers; the master with a power from the owners to sell the vessel, and a Portuguese captain on board among the passengers; a cook engaged at very high wages; rumors existing that handcuffs were in some of the boxes that had been landed; accounts given by her officers in some degree contradictory, explanations apparently withheld on some points; landing the slave dealers and the above boxes near a slave factory; and then remaining an unusual time on the coast, and with an avowed purpose, if not of selling the vessel, to carry back the passengers who came out in her."

When the seizure was made, Captain Simonds was acting as a naval officer in his public capacity, under orders from the commodore of the African squadron. He was acting under the orders of the President and Navy Department in their efforts to enforce the laws for the suppression of the slave trade upon the coast of Africa, and in the discharge of treaty stipulations with England, under which this government had obligated itself to keep a squadron of at least eighty guns upon that coast and in those seas. The instructions to Commodore Skinner from the Navy Department, required him to make an examination of all American vessels suspected to be engaged in the slave trade. And the instructions of Commodore Skinner to Capt. Simonds required that, "should he fall in with vessels, wearing the flag of the United States, under such circumstances as to admit of no doubt on his mind that they were engaged in the prohibited traffic of slaves, to send them in, with their crew and proofs of their guilt, to the United States for adjudication." The committee concur in the opinion expressed by Judge Woodbury, in which he says: "It is manifest that such orders cannot take away from a citizen, engaged in lawful business, any private rights of property or trade; yet, when it becomes proper to issue such orders, and a public officer is employed in carrying them into effect in remote seas, it may be indispensable, with a view to insure their due execution, that if he exercise his power in a reasonable manner, and with probable cause, or, in other words, with good grounds of suspicion of the guilt of a vessel, he must, under the laws, be excused for seizing her for trial for the supposed offence." He further says: "This modification of the common law cannot justly be complained of by the owner, when he and his agents are so conducting as to excite well-grounded suspicion of their being employed in the commission of a crime." The court further declared: "It is doubtful to say, on all the evidence, that reasonable ground of suspicion did not exist." "It is unfortunate for the owners, after being shown to be innocent of any crime by the sentence of the district judge in Massachusetts, that their vessel shall have been taken from them and so long detained, and their charter party lost." "But either they or their agents exposed their property to this suit knowingly. They went in bad company to a bad place, with their eyes open, under the temptation of earning large freight, or selling their vessel at a high price, and under other strong penal laws against the slave trade, and with a squadron of

the African coast to suppress it; and aware, or presumed to be aware, of the right and usage to seize vessels there under suspicious circumstances, it certainly would have been provident to have shunned such exposures, and, not shunning them, it will be indispensable for them to abide by the legal consequences." In accordance with this opinion, the libel was dismissed without costs, and the owners of the "Casket" apply to Congress for relief.

The committee are not prepared to say that these petitioners present such a claim as commends it to the favorable consideration of Congress. They appealed for relief to the judicial tribunals of the country against an officer of the government acting under the laws of the country and the orders of his government; and, upon the hearing of his suit, those tribunals decided against the claimants, and declared that their losses resulted from their own conduct.

It frequently occurs in the judicial tribunals of the country, that suits are instituted for the recovery of damages for malicious prosecutions; and, although it may appear that the party prosecuting such suit may have been wholly innocent of the crime imputed to him, and been acquitted of it, and although he may have suffered great pecuniary loss in the defence of the prosecution of his suit, and his moral character may have been injured, yet if, upon the trial of the civil suit for such prosecution, it appear that there was reasonable or probable cause for such prosecution, the party suing cannot recover. So in the case under consideration—the claimants having, by their own conduct, subjected their property to seizure and consequent losses, they cannot, with propriety, ask that the government should make compensation for such losses.

The committee, therefore, report that the claim of the petitioners ought not to be allowed, and ask to be discharged from its further consideration.

1. The first part of the document is a list of names and titles, including the names of the authors and the titles of the works.

HARVEY HOLGATE—HEIR OF.

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JUNE 10, 1854.—Laid on the table, and ordered to be printed.

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Mr. J. G. MILLER, from the Committee of Claims, made the following

REPORT.

*The Committee of Claims, to whom was referred the petition of Harvey Holgate, only heir of Samuel Holgate, deceased, report :*

That this claim has been often referred to the Committee of Claims, and many adverse reports made thereon. Your committee fully concurring in the report made at the first session of the 31st Congress, believe that the claim ought not to be allowed, and accordingly report that the petitioner is not entitled to relief.





MARY A. M. JONES.

[To accompany bill H. R. No. 397.]

JUNE 13, 1864.

Mr. DENT, from the Committee on Invalid Pensions, made the following

## REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Mrs. Mary A. M. Jones, widow of the late Brevet Major General Roger Jones, report:*

That the petitioner is the widow of the late Brevet Major General Roger Jones, who entered the military service of his country in 1809, and so continued to the day of his death, July 15, 1862; that he served throughout the war of 1812, and was distinguished in almost every action fought on the Canada frontier; was wounded with a bayonet in the leg, and was twice brevetted for gallantry on the field of battle; that he filled the important post of Adjutant General from 1825 to the day of his death—in the language of the commander-in-chief of the army, bringing to the discharge of its highly difficult and responsible duties "an intelligence, honesty of purpose, and untiring devotion, which carried him through every emergency with credit to himself and advantage to the public service." That his distinguished and valuable services during the Mexican war won for him the brevet of Major General, it being the fifth brevet won by him for gallant and meritorious services. It is clearly proved by his attending physician and other testimony, that the close and continued confinement occasioned by the accumulation of business in the Adjutant General's office during the Mexican war, impaired his health, undermined his constitution, and shortened his life; in fact, that the unintermitting and arduous labors called for by the exigencies of the public service—labors which he perseveringly and often painfully discharged at times when his enfeebled health demanded a relaxation of his official duties—were eventually the cause of his death.

The petitioner was left, by the untimely death of her husband, with a family of eleven children, eight of whom are infants and daughters, without adequate means for their education and support, which has compelled her to appeal to the equity and justice of Congress for relief by way of pension, according to the usage in such cases, furnishing numerous precedents of the last and present Congress in cases analogous to hers. The committee, in view of the facts, the long and distinguished services of General Jones, and the impoverished condition of the widow and children, report a bill.

[REDACTED]

NATIONAL ARMORIES.

JUNE 13, 1854.

Mr. R. H. STANTON, from the Select Committee, made the following

REPORT.

*The Select Committee* appointed under the following resolution of the House of Representatives, passed February 13, 1854: "*Resolved*, That a special committee of seven members be appointed by the Speaker, to inquire and report to this House whether the appointment of military officers to superintend the manufacture of fire-arms at the national armories, the construction of light-houses, works of river and harbor improvement, the building of custom-houses and post offices, the construction of water-works for the cities of Washington and Georgetown, the extension of the United States Capitol, and the survey and management of works of internal improvement by the States, is compatible with the public interest and consistent with the nature and character of our civil government; that said committee also inquire and report to this House how many of these military officers in civil employment are intrusted with the disbursement of the public funds without bond and security, and to what extent they have been allowed to make contracts and purchase materials for the public use without the usual advertisement, and how their accounts are settled at the public treasury; that said committee further inquire whether the present embarrassment of the engineer department for want of officers, complained of in the annual report of the colonel of the corps, is not occasioned by the withdrawal of said officers from their proper duties and their employment in civil services, and whether it is expedient, under the circumstances, to grant an increase of said corps; and that said committee have power to send for persons and papers;" and to whom were referred the memorials of 222 citizens of Maryland and the District of Columbia; of 138 citizens of Baltimore and the District of Columbia; of 74 citizens of the same places; of 971 citizens of Baltimore; of 104 citizens of the same place; of 430 citizens of the same place; of 75 citizens of Alexandria and the District of Columbia; of 126 citizens of the same places; of 101 citizens of the same places; of 108 citizens of the same places; of 34 citizens of Shenandoah county, Virginia; of 135 citizens of Hampshire, Virginia; of 71 citizens of Jefferson county, Virginia; of 82 citizens of Hagerstown, Maryland; of 91 citizens of Cumberland, Maryland; of 703 citizens of Springfield, Massachusetts; of 38 citizens of the same place; of 59 citizens of Pittsfield, Massachusetts; of 229 citizens of Worcester, Massachusetts; of 22 citizens of Agawam, Massachusetts; of 101 citizens of

Enfield, Massachusetts; of 142 citizens of South Hadley, Massachusetts; of 70 citizens of Ashfield, Massachusetts; of the mayor and 202 citizens of Boston, Massachusetts; of 49 citizens of Thorndike, Massachusetts; of 103 citizens of Feeding's Hill, Massachusetts; of 262 citizens of Massachusetts; of 104 citizens of same State; of 309 citizens of same State; of 82 citizens of Pittsburg, Pennsylvania; of 109 citizens of St. Louis, Missouri; of 295 citizens of Providence, Rhode Island; of 30 citizens of Broome county, New York; of 91 citizens of Bloomington, Fayette county, Ohio; of 70 citizens of Mason county, Kentucky; of 52 citizens of Ellington, Connecticut; of 76 citizens of Collinsville, Connecticut; of 23 citizens of Connecticut; of 53 citizens of same State; of 305 citizens of same State, and of 141 citizens of same State, protesting against the employment of military officers in the superintendence of the mechanics employed in the manufacture of arms and the construction of various civil works, as to so much of said inquiry and memorials as relates to the national armories,—report:

The national armories were the offspring of that necessity which became apparent at a very early period of the republic, of providing from its own resources the means of the country's own defence. Their establishment is due to the practical wisdom and sagacious foresight of Washington, whose repeated suggestions in regard to the public defence led to the enactment of April 2, 1794, by which authority of law was given to commence the fabrication of arms, under the superintendence of government agents, to be appointed by the President. It does not seem, from any contemporaneous record or enactment, that the idea of subjecting these establishments to any other than civil superintendence was conceived or suggested, either by the Executive or Congress. They were justly regarded as government manufactories, created for purely mechanical purposes, and intended to enable the government to realize for its own use the products of a single branch of the mechanic arts. In no important particular does it seem that they were to differ in their organization or management from similar establishments, for the product of the like fabrications, under private control. Considering the state of public sentiment at that period of our country's history, when jealousy of military encroachment and power had so recently formed an important element in that spirit of discontent which eventuated in shaking off the authority of the British crown, it is doubtful whether the establishment of the armories would have had either the sanction of Washington or of Congress if it had been proposed to subject the mechanics and others employed in them to the supervision and control of commissioned officers of the regular army.

From the period of their establishment to the early part of the year 1841, and through the vicissitudes of more than one war, the armories were continued under the control of experienced and well qualified civilians, appointed in the manner provided in the law of 1794. It may be safely said, that in their management, in the perfection, efficiency and extent of their products, they fully realized the highest expectations which had been formed of their capacity to meet the public necessities. It was not until 1841, a period of forty-seven years from

their first establishment, that any serious effort was made to supersede the civilians in charge by placing over the armories, to superintend and control the workmen, officers belonging to the ordnance corps of the army. The history of that transition from civil to military control, affords strong reason to believe that its success was owing more to the persevering efforts and extensive influence of that department of the army, than to any peculiar aptitude of that class of men for the management of such manufacturing establishments, or to any public necessity demanding a change of system. The removal of the civil superintendents was made by the Secretary of War three days before the death of President Harrison, and at a moment when he must be supposed to have had no agency in it. The law having invested the President with the sole power of appointing the superintendents and other officers of the armories, the designation of military men for that purpose by the Secretary of War was a usurpation of power, and it became necessary to legalize it by an act of Congress; and accordingly, in 1842, such an act was obtained. The proposition, when first presented to the House, was rejected. It shared the same fate in the Senate; but subsequently, by the direct interference of the head of the Ordnance department, was attached to the army bill as an amendment. When it came back to the House in this shape, it was again rejected, and only received its reluctant sanction upon the recommendation of a committee of conference, the House submitting to the wrong rather than jeopard the fate of the bill upon which it had been fastened. The authority to continue military officers over the mechanics at the armories was thus extorted from Congress against the expressed will of that body. It is maintained by the War Department and officers of the army that the change has been highly promotive of the interest of the country, in the economy of expenditure, the increased efficiency of the armories, the improved character of their products, and the good order and system which have been infused into their operations. On the other hand, it is contended by those opposed to the military supervision, that these pretensions are not well founded; and that, while the public money has been more lavishly expended under military control than under the former system, there are no improvements due to the change which would not have been to a greater extent realized with the same pecuniary means under civil superintendence. It is to this inquiry that your committee has patiently given its attention, and which it proposes now to consider.

**OFFICIAL TESTIMONY TO THE GOOD MANAGEMENT OF THE ARMORIES  
UNDER CIVIL SUPERINTENDENCE.**

Since the military commandants obtained control of the armories in 1841, there has been a studied, systematic, and stereotyped effort to impress the public mind with the belief, that under the civil superintendents there existed many enormous abuses, which not only increased the expenses of the establishments, but impaired their efficiency, and brought discredit upon them as national works. The records of the War Department and of Congress since 1841 teem with these charges; and the pertinacity with which they have been repeated from year to year serves only to give effect to the complacency with which those in

control assume to have arrested the abuses and checked the evils complained of. It is but natural to suppose, that if there existed such a state of things at the armories, under the management of the civil superintendents, as is here alluded to, it would not have escaped the vigilant observation of the military authorities at Washington, under whose immediate control the armories were placed by law. These establishments were subjected to regular, periodical inspections by experienced and accomplished officers of the Ordnance department detailed for that duty; and it will be no compliment to either their capacity or integrity if the published records of the government fail to show that they observed and exposed the evils which are now said to have then existed in so discreditable a degree. The truth is, so far as can be ascertained from the published records of the country, there exists no evidence which, in the slightest degree, confirms the alleged abuses. On the contrary, from the very earliest period of their existence down almost to the very moment when the military power assumed the immediate management of them, the War Department and its officers have borne constant testimony to their efficient management, their rapid improvement, and the excellent quality and cheap cost of their products.

As early as the month of January, 1800, when the armories had scarcely five years' existence, before the establishments were fairly organized, and when the workmen had acquired but little skill in this new branch of business, the Secretary of War presented to Congress a very flattering account of the "progressive improvements" manifested at the armories, and the cheap rate at which the arms were manufactured. He represents the cost of each musket fabricated from 1795 to 1800 to be \$13 17; being \$1 80 less than the amount paid by government in 1848 to private contractors for the same article.

On the 7th of March, 1806, Mr. Dearborn, then Secretary of War, reports the number of arms manufactured at the national armories in the four preceding years, and states the expense of each musket made at Harper's Ferry to be \$13 43½, and at Springfield \$8 94½—being an average of only \$11 19. He speaks in flattering terms of the character of the work done, and says:

"Although the muskets manufactured at the Springfield armory are not as highly finished as those made at Harper's Ferry, they are still considered *equal, if not superior in workmanship, to the best muskets manufactured for the use of soldiers in either France or England.*"

In 1810, in obedience to a resolution of the House of Representatives the Secretary of War, Mr. Eustiss, detailed an officer to examine the Springfield armory; and on the 27th of February the Secretary then reports the result to Congress:

"From the report of this officer, on whose judgment and fidelity reliance is placed, it appears that, in the early stages of that manufactory muskets of an inferior quality were made, improvements have been gradually making, and those manufactured in the last year *are of superior quality.*

"From the statement made by this officer, and from an inspection made by himself in the summer past, the Secretary of War is of opinio

that the muskets manufactured at this time *are of good quality, and that the public works at Springfield are well conducted.*"

In 1819, Major James Dalliba, an accomplished officer of the ordnance corps, was detailed by that department to investigate the state and condition of the Springfield armory; and his report, which is minute and able, was communicated to the Committee on Military Affairs of the House in 1823, and by that committee submitted to Congress. The examination by that officer was thorough and searching, and he bears strong testimony in favor of the good management of the establishment in every important particular—its general policy, the character and skill of the men employed, the economy of its operations, the method of executing the work, and the excellent character and quality of its products. He says:

"The police of the establishment is universally good; and, considering the nature of the business, (manufacturing,) *much better than I had anticipated.*"

Again:

"The police generally in and about the shops is as good as the nature of the business will admit of. *A further attention to that point I consider would be unprofitable.*"

In regard to the quality of the work and arms when finished, he says:

"The quality of the workmanship of the arms is, in my opinion comparatively excellent; and it is believed to be superior to that in any of the national armories in Europe. The plan adopted by the superintendent, if closely pursued, cannot fail to produce good work."

On the subject of the economy observed in preserving, using, and expending the stock and materials, he remarks:

"The arrangements made by the superintendent to insure economy in the stock, materials, and tools, are good, and appear to be strictly enforced. The method of accountability established and enforced is such, that no unnecessary loss or waste can well take place without the amount being deducted from the wages of the workmen, or others who have the property in charge. I was much pleased with this arrangement, and found the actual economy throughout to be much greater than I had anticipated, and equal to anything I have ever seen in any private manufactory; there is, in fact, nothing lost. I dwell upon this point because its importance in such an establishment can scarcely be calculated."

He speaks in the following terms of the government of the men, the good order they observe, and their general character:

"The regulations for the government of the men, for the good order of the same, and of the shops, and the post generally, are good and well calculated to produce peace and harmony among themselves, and respectability with the surrounding citizens. One great point has been gained by the superintendent: that of prohibiting the use of ardent spirits in and about the works. This, above all other things, will have a good tendency; but, owing to the effect of custom and habit, it was a difficult one to establish. The character of the workmen generally, and almost universally, is good, and much better than is usual with mechanics employed at large manufactories. There is not one drunkard, or otherwise vicious man, at the armory, or none that are habitually so.

They are mostly very respectable, and some of them wealthy citizens and almost all natives of New England.

"The workshops of the whole establishment are in excellent condition and repair."

The same officer speaks of the close and scrutinizing care with which he made his examinations, and says it is only by such means "that all its good arrangements and excellent operations can be discovered; and it is only by such an examination that we can learn how much credit is due to the superintendent, and how much integrity, skill, and talent have been exercised, and how much attention and time have been devoted to its interests by him."

He sets down the cost of the musket complete, at that time, at \$12 40, being \$2 57 less than was paid by government in 1848 to private contractors for the same article.

On the 21st day of November, 1823, Col. Bomford, then at the head of the Ordnance department, in his report to the Secretary of War says:

"It may not be irrelevant to add that there has been a *steady progressive improvement*, as respects both the number and quality of the arms procured. The product of the national armories will this year exceed, by two thousand stands, that of any former year, *and of a quality equal to any that have been manufactured in the country.*"

In his regular report of November 15, 1833, Col. Bomford says:

"The operations at the national armories during the past year have been conducted *with improved ability and economy*, and have been followed by *the most satisfactory results.*"

In a report of December 28, of the same year, he exhibits a table of the cost of manufacturing the musket each year from 1823 to 1833 and shows the mean cost of each musket for that period to be \$11 96 or less by \$3 01 than the sum paid by government for muskets in 1848

His annual report of the next year, November 18, 1834, says:

"I take pleasure in being able to state that *the most satisfactory results have been obtained* this year in the manufacturing operations of the national armories."

Mr. Poinsett, Secretary of War, in his annual report of the 28th November, 1838, says:

"The armory and manufactory at Harper's Ferry, which is conducted *with great ability by its present superintendent*, Colonel Lucas, requires alterations and repairs. The temporary workshops erected there are altogether insufficient; and now *that the usefulness of this establishment is placed beyond doubt*, permanent buildings ought to be substituted," &c.

In Mr. Poinsett's next annual report, November 30, 1839, speaking of the small-arms manufactured at the armories, he says:

"*They will challenge a comparison with any in the world. This desirable end has been brought about by improvements begun and perfected in the national armories*, and, by requiring the same improvements in the machinery, equally good arms will be obtained from the private contractors."

Col. Talcott, who succeeded Col. Bomford as the head of the Ordnance department, in his report of the 29th November, 1839, also



bears his testimony to the superior quality of the work executed at the armories. He says:

"The superiority of the small-arms recently fabricated, over those formerly made, evinces the utility of public establishments for improving this branch of manufacture."

This same officer, on the 30th November, 1840, within a few months of the change of the superintendency from civil to military, in his official report of that date, says:

"The manufacture of muskets according to the new model has been successfully established at both the national armories, and at some of the private armories. The substitution hereafter of percussion instead of flint locks, which is becoming general in Europe, will render the arms *as nearly perfect as can be attained*, and, judging from the specimens of foreign arms of the most approved patterns, recently imported, *decidedly superior to any arms of foreign manufacture.*"

On the 12th day of January, 1839, Mr. Wm. C. Johnson, from a select committee of the House of Representatives, to whom was referred an executive communication on the subject of the establishment of a national foundry for cannon, made an interesting and able report, in which he alludes to the manufacture of small-arms at the armories in highly flattering terms. There is no doubt that the information embodied in the following extract from the report was obtained from the Ordnance department, and is highly creditable to those establishments, as showing the great state of perfection to which they had attained under the management of civilians:

"The most experienced transatlantic officers and artisans admit that the muskets and rifles now made in the United States are superior, in point of finish and usefulness, to the best made in Europe. So perfect and improved has been the system adopted in our factories, that we have accomplished what a board of French officers pronounced a desideratum that was impossible. They thought that it was impossible so to make a musket that a part of the work made for one would suit or fit the residuary part made in another shop or factory, and by different hands; that the springs and screws made to suit a given lock, could be made with such uniformity and precision as to answer for the corresponding parts of a different lock. They thought that, if part of a musket was lost or injured, there could not be taken a similar part of another and make it quadrate with all its uses, but that the aid of a mechanic must be employed or the musket be discarded. Such is or has been the fact with the arms made in France, because the filings of the various parts are regulated chiefly by the eye. This is not the case in our national factories. The system of machinery is reduced to such perfection that every part of a musket and rifle is made with such nice precision and accuracy, that every screw or spring made for a given part or purpose, will fit every musket or rifle that is made in each of the public factories. Take any part of a musket made in the Springfield factory, and it will be precisely, in every particular, like those parts made at Harper's Ferry. All the parts of two muskets may be taken asunder, though one be made at Harper's Ferry and the other at Springfield, and thrown into an indiscriminate mass, and there may be taken from the heap thus blended, at random, the component parts of

a musket, and these put together; and the musket thus formed will be as perfect as precision can be, although half the musket be made at one factory and the other half at the other. The chief of the Ordnance department has frequently tried the experiment with success. Hence a musket or pistol made in the public factories of the United States is almost indestructible; for, from the fragments of arms on a battle-field, a musket can readily be put together as perfect as when first made.

"The improvements made in the rifle are still greater. The common rifle can be loaded and discharged but *twice* in a minute, while Hall's rifle, made at Harper's Ferry, which receives the load at the breech, can be loaded and discharged *eight* times in the same space of time."—*House Reports 27th Congress, 3d session, vol. 2.*

It thus appears that during the whole period, beginning in 1794 and ending in 1841, while these national works were under the control of superintendents selected from the body of our citizens, the system of management and the character of their products were such as to extort the constant commendations of the War Department and its officers—the very men through whose influence the change from civil to military control was effected. From no published record or document to which the committee has had access does it appear that any complaints of bad management or other abuses were ever made, in any quarter, of the character of those which have (only since the change) been ascribed to the civil system. The uniform testimony of the department to the good management, economy, order, progressive improvement, and efficiency of the establishments under civil management, is more than a sufficient refutation of such charges, made, as they are, by men who, to say the least, are, from their position and relation to the armories, naturally under a strong bias in favor of the perpetuation of military control. The very graphic and intelligible description which Mr. Johnson, in his report, gives of the perfection to which the system of interchange of parts had been carried, at that time, in the manufacture of arms, is a high tribute to the skill and efficiency of the armorers, and most strongly corroborates the opinions so frequently expressed by the heads of the War and Ordnance departments in regard to the good management and capacity of the establishments.

#### TESTIMONY OF WITNESSES TO THE GOOD MANAGEMENT OF THE ARMORIES UNDER CIVIL SUPERINTENDENCE.

It will be seen, in a subsequent part of this report, that the appropriations for special purposes, during the period of civil superintendence, were very small in comparison to those made during the subsequent twelve years; and that in the extent and perfection of the machinery, as well as in the means of making such improvements as gave the appearance of neatness and beauty to the shops and grounds, the civilians had not the same facilities which were, from the cause alluded to, afforded to the military commandants. Much, therefore, of the improvement, in this respect, so vauntingly presented as the evidence of superior qualifications on the part of military officers for such service, is rightfully to be ascribed to the lavish appropriation of money, and not to any superiority of military men over civilians. With the same

amount of money, improvements of equal style and beauty, and perhaps to a greater extent, could have been made by the civil superintendents, if prudent to do so.

Col. John Robb, who for many years had charge of the Springfield armory, and whose fidelity, experience, and intelligence, during the whole period of his administration, commanded the constant approbation of the Ordnance department, testified at length before your committee in regard to all points of dispute in reference to the condition of the armory at that time. He gives a most emphatic contradiction to the alleged abuses referred to by the Secretary of War, in his answer to the interrogatories of the committee, and by Col. Ripley, the present commandant, in his statement appended to that answer, and shows that the discipline, good order, economy, and efficiency of the establishments, instead of being such as is represented, were most excellent. Your committee refer to his testimony for much valuable information upon these points, and also upon the subject of the effect of the two systems in developing the inventive capacity and high moral qualities of the workmen, and in promoting contentment, harmony, and happiness among them.

In regard to the Harper's Ferry armory while under civil management, and as respects its condition and efficiency, reference is made to the testimony of Colonel Benjamin Moore, William H. Moore, Adam Rhulman, and A. R. Hobbs, all of whom speak from actual knowledge of the facts, and were in positions which enable them to speak with absolute certainty in regard to the matters of which they testify. They are all practical men, of great respectability, and their statements and opinions are entitled to the highest credit.

#### EXPENDITURES UNDER THE CIVIL SUPERINTENDENCE.

The records of the War Department furnish exact accounts of the aggregate expenditures and products of the armories for each year from their first establishment, and a carefully prepared set of tables, exhibiting these results to June 30, 1841, will be found in the appendix to this report, marked A. An examination of these tables cannot fail to satisfy any candid mind that, in an economical point of view, the civil system of management has been most advantageous to the interest of the government.

From 1794 to 1841, a period of *forty-seven* years, the total expenditure for all purposes, embracing the original cost of the land and construction of the armories, with every subsequent item of expense, has been :

At the Springfield armory.....	\$6,084,751 09
At the Harper's Ferry armory.....	6,439,766 91
	<hr/>
	12,524,518 00
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For the original cost of the land and buildings, and subsequent repairs, improvements, and purchase of machinery, the expenditures were :

At the Springfield armory.....	\$411,378 03
At the Harper's Ferry armory.....	809,156 88
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	1,220,534 91

This leaves, according to the rule of the Ordnance department, chargeable to the manufacture of arms, for a period of *forty-seven years*, the sum of \$11,303,983 09.

During this period, the expenditures at the two armories for repairs, improvements, and new machinery, averaged each year the sum of \$25,968 82. This sum includes the original cost of the armories, the cost of all repairs to the buildings and machinery, the cost of all new buildings, improvement of grounds, and new machinery.

The average total expenditure for each year, for both armories, is \$266,479 10.

#### EXPENDITURES UNDER MILITARY SUPERINTENDENCE.

The military commandants obtained the superintendence of the armories about the first of April, 1841, and the tables referred to above bring the expenditures down to the end of the fiscal year 1853, June 30. This embraces, therefore, a period of *twelve and a quarter years* during which the armories have been managed by officers of the army.

The total expenditure for all purposes for that period, has been:

At the Springfield armory.....	\$2,422,665 49
At the Harper's Ferry armory.....	2,552,139 60
To which must be added the pay of the commandants, drawn from the army appropriation, but under the civil system paid out of appropriations for manufac- turing arms.....	72,000 00
	<hr/>
	5,046,805 09

For purposes other than the manufacture of arms, viz: repairs, improvements, and new machinery, the expenditures for this period have been:

At the Springfield armory.....	\$486,865 44
At the Harper's Ferry armory.....	614,498 31
	<hr/>
	1,101,363 75

This leaves chargeable to the manufacture of arms, according to the rule of the Ordnance department, for *twelve and a quarter years*, \$3,873,441 34.

During this period the average annual expenditure for special purposes, for both armories, embracing new buildings, repairs, improvements, and new machinery, was \$89,907 32.

The average total expenditure each year, for both armories, was \$411,984 09.

## COMPARATIVE VIEW OF EXPENDITURES UNDER EACH PERIOD.

During a period of *forty-seven years*, there were expended by the civilians, for all purposes, \$12,524,518.

During a period of *twelve and a quarter years*, there were expended by the military commandants, for all purposes, \$5,046,805 09.

the average annual expenditure for all purposes, under the civilians, was.....	\$266,479 10
under the military commandants.....	411,984 09

Excess of expenditure each year by military over civil superintendents.....	145,504 99
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The total amount of expenditures for special purposes, under the head of repairs, improvements, and new machinery, which embraces original cost of armories, superintendents' quarters, grounds, and all incidental objects, for *forty-seven years*, under the management of civilians, was \$1,220,534 91; for *twelve and a quarter years* under military management, \$1,101,363 74.

the average annual expenditure for these special purposes under the civil superintendents, was.....	\$25,968 82
under the military management.....	89,907 32

Excess expended by military over civil superintendents each year.....	63,938 50
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The aggregate of the excess of *total expenditures* for a period of *twelve and a quarter years*, during which military officers have managed the armories, amounts to the enormous sum of \$1,782,436 17. The aggregate of the excess of expenditure for special purposes, for the same period of *twelve and a quarter years*, is \$783,246 62.

## PRODUCT OF THE ARMORIES, COST OF THE ARM DURING EACH PERIOD, AND LOSS TO GOVERNMENT, UNDER MILITARY MANAGEMENT.

The arms manufactured under civil superintendence from 1794 to 1841, were as follows :

at the Harper's Ferry armory.....	369,680
at the Springfield armory.....	461,418
Total .....	831,098

Under military superintendence from April, 1841, to June 30, 1853 :

at the Harper's Ferry armory .....	129,454
at the Springfield armory.....	183,700
Total .....	313,154

The cost of each arm during the period of civil superintendence, estimated upon the aggregate of expenditure, is.	\$15 07
During military superintendence.....	16 11
Difference in favor of civil.....	1 04

The average amount of expenditure made each year under the civil superintendents, was \$266,479 10; and the average number of muskets produced, was 17,683. The average amount of expenditure made each year while under the military commandants, was \$411,984 09; and the average number of muskets produced, was 25,563.

If the same economy had been observed in the application of the expenditures to the fabrication of arms under the military superintendence which seems to have existed under the former system, instead of 25,563 muskets produced each year, the result would have been 27,338, or an increase of 1,775. In other words, the armories have produced during each year of military control 1,775 muskets less than ought to have been produced for the money expended. The loss, therefore, resulting to the government from this cause, is equivalent to a yearly sum of \$26,749 25; which for *twelve and a quarter years* amounts to \$327,678 30. In this estimate of loss, the great advantages of improvements in machinery and increased skill of workmen, and other important additions to the facilities of manufacturing, which the period covered by the military management possessed over the period of civil control, are not taken into consideration. These advantages are enormous, and can only be fully appreciated by men practically familiar with the present improved state of the mechanic arts.

#### NET COST OF THE ARM UNDER EACH SYSTEM.

The Secretary of War, in his answer to the fifth interrogatory of the committee, exhibits what he conceives to be the net cost of manufacturing a musket during twelve and a quarter years of military control, and for a like period of civil superintendence. The comparison, of course, is unfavorable to the latter, and without explanation might be misunderstood. The following is the Secretary's statement:

	Under military officers.	Under superintendence of civilians.
At Springfield.....	\$10 27 <sup>12</sup> / <sub>100</sub>	\$12 65 <sup>11</sup> / <sub>100</sub>
At Harper's Ferry.....	14 13 <sup>21</sup> / <sub>100</sub>	14 76 <sup>11</sup> / <sub>100</sub>

The Secretary adds: "The foregoing cost of arms is irrespective of the expenditures for buildings, lands, &c., stated in the answer to the fourth question; these being supposed worth their cost." This statement agrees exactly with the calculation of the Ordnance department, as shown by the testimony of Mr. Bender, on pages 58 and 59 of the printed evidence. It will be observed, too, that the calculation not only excludes the expenditures for lands, buildings, and improvements, but also the large sum of \$72,000, the pay and emoluments of the commandants, which has been drawn from appropriations for the sup-

of the army. Under the civil system the salaries of the superintendents were taken from the appropriations for manufacturing arms, of course were chargeable to that service, and are included in the calculation against the civil superintendence. Deduct that amount from the cost of manufacturing under the civil superintendence, and, by the process of the Secretary, the cost of the arm would be little more under the civil than under the military system.

The Secretary's result shows that the arms manufactured by the civilians averaged \$13 76 $\frac{1}{10}$  each, while those of the military commandants averaged \$12 20 $\frac{1}{10}$ ; or a difference in favor of the latter, of 5 $\frac{1}{10}$ %. But the mode of calculating the cost adopted by the department is obviously unfair, and is made according to no correct principle. Large additions to the land and machinery, increased capacity of the buildings, and extensive repairs and improvements, afford greater facilities for the execution of work, there is no good reason why a large part of these expenses should not form an element of the calculation. Why should the expense of superintending the establishment not enter in the cost of manufacture? The idea that buildings and machinery which are in constant use, and subject to regular annual deterioration and repair, are worth at any given time all the money they have cost, is simply preposterous.

The Secretary of War, in answer to the committee's fourth interrogatory, shows that the military commandants, during the period referred to, expended for purposes not charged to the manufacture of arms, \$1,101,354 75, while the civil superintendents, for a like period, expended only \$562,086 40. It is insisted, strenuously, that these extra appropriations were indispensable for the convenience and efficiency of the establishments under military management; and if so, the object being to produce arms for the use of government, why should not these *necessary* expenditures be considered in the cost of production? If the whole are not properly chargeable to that account, at least a very large portion is. A proper adjustment of the account in this respect, would very materially change the result presented by the department.

It is worthy of observation, that the rule of the department in making the cost of the arm is by no means uniform, and may be set down as arbitrary and irregular. Officers of the department differ among themselves as to the items which should be charged to that account; it is very obvious that they have it in their power, for any given period, to show the cost of the arm to be much or little, as their inclinations or judgments may dictate. The scale of cost may be readily varied to suit any state of circumstances, by increasing or diminishing the items of the calculation. As an illustration of this fact, we find that the official reports to Congress of the cost of the arm for the period stated by the Secretary of War—under civil supervision—give a very different result from that now presented by him. On the 28th of December, 1833, Colonel Bomford, then the head of the Ordnance Department, reported to Congress that the cost of manufacturing arms from 1823 to 1833, at the national armories, was only \$11 96 each; or \$1 80 less than the sum stated by the Secretary. The subsequent reports, to 1839, show the following result:

In 1834, the cost was.....	\$11 05
1835 .....	10 95
1836 .....	11 00
1837 .....	11 69
1838 .....	11 54
1839 .....	11 79
<hr/>	
* Mean cost.....	11 39

With the exception of the year 1840, this covers the whole period of civil superintendence referred to by the Secretary of War, and shows an average cost, from official sources, much less than that now presented by him. The musket cost something more in 1840, for the reason that during that year the transition from the old to the new model, adopted by the ordnance board, took place, and the cost of adapting the tools and machinery to the new patterns is included in the estimate. The cost for that year is \$17 40; and if this be estimated, it will make the mean cost for these seven years only \$12 25—being \$1 51 less than the Secretary's estimate. Whether the Secretary's present estimate is more reliable than the regular official estimates made at the time, is a question the committee leave to others to determine. But Colonel Ripley, the present commandant at Springfield, on page 151 of printed testimony, exhibits the tariff of wages paid to workmen in 1841, with that paid subsequently, and shows that upon the mere labor of fabricating a musket, there has been, under military management, a reduction of \$3 19. The inconsiderable sum of eighty-nine cents of this amount, he ascribes to tools and machinery; but complacently assumes that the balance (\$2 39) is due to "system and economy." It must be confessed that the "system and economy" which takes from the labor of workmen on each musket such a sum, and enables him to show no equivalent reduction in the cost, is a species of "system and economy" not easily comprehended. The cost for labor in fabricating a musket under the civil system, was, according to the tariff of prices paid workmen referred to, \$3 30; but under military management, it is \$3 19 less. The musket, therefore, made by the military commandants, ought to have cost at least that much less than those made under the civil superintendents; and yet it is not pretended by either the Secretary of War, the Ordnance department, or Colonel Ripley, that a reduction to that extent has been realized. Again: It will be seen from the testimony of Colonel Benjamin Huger, late commandant at Harper's Ferry, (page 76,) that the practice prevails, under the military management, of charging the workmen with the "*oil and files*" used by them in their operations. Under the civil superintendents these articles were furnished by government, as other materials and tools were furnished, without taxing the workmen with their cost. The amount of saving from this operation ought still further to have diminished the cost of production, but does not seem to have done so.

Those who will take the trouble to examine the subject of expendi-

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\* See, also, Colonel Steptoe's statement, printed testimony, page 239.



ures at the armories while under military control, cannot fail to perceive that the efforts to produce economy have been more directed to the wages of the workmen, and other objects by which their acquisitions are affected, than to the great sources in which the exercise of proper economy might have been really beneficial to the government. The costly character of the officers' quarters, the stylish adornment of the grounds, and the lavish sums expended in alterations and changes of buildings, made necessary from want of the exercise of skill and judgment in their original erection, as seen by the testimony of the Messrs. Moore, are instances which will illustrate this fact.

#### THE QUALITY OF THE ARMS MADE UNDER EACH SYSTEM.

It is assumed, by those who are interested in the continuance of military control over the armories, that the work executed now is greatly superior in quality to that done under the management of the civil superintendents. If this were really true, it would afford no sufficient reason, other things being considered, why military officers should remain in command of these establishments. In the period covered by their control of the armories, vast improvements have been made in every branch of manufacture, growing out of the numerous new inventions, improved machinery, increased skill and experience of workmen, and other facilities, unknown during the period of civil superintendence; and if great improvement in the product of the armories has not taken place under the military officers, it only shows their incompetency for the positions they occupy, and the bad management of the establishments under their administration.

The attempt now to depreciate the character of the arms fabricated during civil superintendence is an attack not only upon all the inspection reports of that period, but an impeachment of the veracity of the high officers of government, whose reports to Congress invariably mentioned the quality of the arms produced under that system as most excellent, and surpassing in every particular those manufactured in any other quarter of the world. Captain Maynadier, who is now and has been during the whole period of military superintendency the assistant of the Colonel of Ordnance, says, in his testimony, page 61: "Judging from the inspection reports received from the armories, and from the satisfaction which the arms have given to those who have used them, *there is no reason to believe that there were ever any arms made of bad quality under either system.*" But that the military commandants have no advantage in this respect over the civil superintendents, may be seen from the testimony of Adam Rhulman, Joseph C. Foster, and Governor John I. Steele. That these gentlemen, all being practical mechanics, were competent to judge of the quality of the arms, and had opportunities of personal inspection, entitles their testimony upon this point to much consideration. The testimony of Wm. Smith and Albert Eames, taken before the commission at Springfield, and found on pages 258 and 259, specifically describes the character of the work upon muskets of each period examined by them, and is referred to as showing in what respects those manufactured under military supervision were defective. The statement of two of the Springfield commissioners, (who were

both practical mechanics,) made under oath, and found on page 264 is also corroborative of the testimony of these witnesses.

#### ABUSES UNDER THE MILITARY SYSTEM.

The committee has not omitted to scrutinize with some care the financial policy of the military commandants in the management of the affairs of the armories, and they find existing such gross abuses in this respect, that they would be remiss in their duty if they did not bring them to the attention of Congress, with the expression of an opinion that they ought instantly to be corrected and rebuked. It will be seen, from what has preceded, that the appropriations "for repairs, improvements, and new machinery," during the period of military control, have been excessively large—nearly twice the sum appropriated for a like period immediately preceding, when the armories were under civil control, and within a small amount of being fully as much as had been appropriated for those purposes during the whole period of forty-seven years of civil management. The custom of the military commandants is to make out estimates each year for the various amounts needed the succeeding year, with the reasons which make necessary each item. These estimates and reasons are reported to the Ordnance department, and by the Secretary of War communicated to Congress. In almost all cases the aggregate of the estimates is granted by Congress, under a general head of "repairs, improvements, and new machinery," and full faith is reposed in those intrusted with the expenditure, that it will be applied to those specific purposes for which estimates were made. Congress has never been made aware of the latitude taken in the expenditure of these appropriations by the military commandants at the armories, or such a system of expenditure as has prevailed would never have been tolerated for a single moment. Money is asked for and appropriated for one purpose; but the commandant, at his discretion, diverts and misapplies it to another. The reports of the commandants to the Ordnance department do not show the specific objects to which expenditures of this kind are applied, or the amount devoted to each. The blank form of return submitted by Mr. Bender, a clerk of the Ordnance department, and found on page 60 of the printed testimony, shows that accounts are returned only of the expenditures for *labor and materials in the gross*, and without reference to the specific improvements upon which they are applied. Mr. Kitzmiller, the intelligent clerk of the military commandant at Harper's Ferry, upon this point says, the accounts "do not exhibit all the expenditures for each specific object estimated for." It is, therefore, impossible to ascertain from the Ordnance department with what fidelity the intentions of Congress are carried out in the application of the money granted, or the cost of any particular object of improvement.\*

It will be seen from the testimony of Mr. Kitzmiller, the clerk above alluded to, that in 1846 an appropriation was made for building a new rolling-mill at Harper's Ferry; but the commandant, instead of ap-

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\* See correspondence with the Secretary of War and Colonel Craig, on pages 198 and 199 of printed testimony, and Appendix B of this report.

lying the fund to that object, applied it to other purposes; and the rolling-mill was not commenced until an appropriation was several years afterwards made to build a new arsenal. For this latter object two appropriations have been made—one for \$15,000, and another for 13,700—out of which the rolling-mill and other improvements have been constructed, and nothing but the mere excavations for the arsenal completed. To obtain from Congress another appropriation to construct the arsenal, an absolute fraud upon that body must be practised. The testimony of Mr. Kitzmiller will show, that of the objects for which estimates are presented to the present Congress, and the money asked for on account of the necessity of the improvements, several of them are already *completed, in use, and paid for!* The witness testifies, that of the improvements made last year and year before, and paid for out of appropriations already made, but which are asked for the present year, are: a cistern, for which \$1,000 is asked; repairs to bell-shop and boring-mill, for which \$1,800 is asked; and the tilt-hammer, for which \$1,300 is asked. The reasons given to Congress by the Ordnance department, at the beginning of the present session, for these appropriations, may be found on page 189 of the "Estimates Appropriations," and are as follows:

For the cistern: "*To supply the workshops with water, which has now been brought from a distance.*"

For repairs to bell-shop and boring-mill: "*The lower stories of these buildings require re-flooring.*"

For the tilt-hammer: "*The tilt-hammer is to be placed in the rolling-mill, and will be required for drawing band plates and other heavy work.*"

The money thus asked for is not actually needed for the purposes set forth, for the objects are already accomplished, paid for, and in use; it is intended to supply the place of money appropriated heretofore for other purposes, and used and consumed with the same unwarrantable latitude before spoken of. Mr. Kitzmiller says, on page 52 of the testimony: "We would use part of the appropriation of \$39,500 asked for the next fiscal year, if made, for the construction of the arsenal."

This looseness in the financial affairs of the armories hardly comports with the high pretensions to exactitude, economy, and scrupulous regard for laws and regulations, set up in some quarters for the military administration of the armories. On the contrary, it shows a reckless and wanton disregard of all the principles of correct management, which ought not to be tolerated in any department of the government. These developments will show that there is no new restraint on the military commandants, except the extent of the appropriations, in the expenditure of money for special purposes, and no accountability as to its specific application. They will also show how happens that such enormous sums are demanded each year for these purposes. Much of the appropriations asked for and obtained for other purposes has been expended, both at Harper's Ferry and at Springfield, in the erection of fine edifices for the commandants' and paymasters' quarters. The War Department, as will be seen by the letter of the Secretary, on page 198 of the printed testimony, can afford no information as to the amount actually expended upon these elegant and

highly-improved structures. The residence of the commandant at Springfield is represented as being palatial in its extent and appearance, and the grounds attached as exhibiting a princely state of embellishment. It would have comported more with republican simplicity and justice if some of that economy directed to the reduction of the wages of the workmen, and the taxing them with the cost of "orders and files," had been observed in the expenditures upon these buildings and grounds. (See Appendix B.)

It is important not only that some restraint of law should be interposed, by which appropriations for the armories shall be confined to the specific objects for which Congress grants them, but that the Ordnance department, if allowed to continue its control over these establishments, should be compelled to require accurate accounts to be kept of the expenditures upon each separate object of improvement. A report of these expenditures, showing in detail each object of improvement and the cost thereof, should be made to Congress at the commencement of each session.

The practical details of the establishments are under the immediate management of master-armorers. They keep accounts with the inspectors for tools, work, materials, &c., distribute and apportion work in each branch of manufacture, and see that each one is in an equal state of advancement. Their positions are of much importance and responsibility, and have immediate relation not only to the police of the establishments, but to their efficiency and economy in every branch. They are by law appointed by the President, and the tenure by which they hold their positions renders them, in some respect, independent of, and a check upon, the superintendents. They were not subject to removal by the military superintendents—they were not in positions to be made subservient to them—they could be got rid of only by overriding the law. This was done at both armories, by appointing *acting master-armorers* in place of master-armorers, and reducing their salaries from the sum of \$1,200 per year to \$500. While the name of their offices and the amount of their wages were alone changed, their duties and responsibilities remained the same. Captain Maynadier, in his testimony, discloses the real motive of this flagrant infraction of the law and gross violation of the legal rights of these officers. An officer deriving his appointment from the President, if not pliant enough to bend to the will of the commandant, could not be so easily "displaced," as if he were entirely dependent upon that functionary. It was to secure the perfect dependence and subordination of the master-armorer to the will of the commandant that the expedient of changing the name of his position and amount of his salary was made necessary. The inspectors, too, under the law are entitled to fixed salaries; and, under pretext of economizing the expenditures, these officers were changed to *foremen*, and their salaries of \$800 per annum cut down to a per diem of \$2 25. It is due to the present Secretary of War to say that when this abuse of the law and wrong to officers at the armories was made known to him, he took instant steps to arrest the wrong. The master-armorers have been restored to their positions, or new ones appointed by the President, and the inspectors invested with their title and salaries. These occurrences are referred to as exhibiting the dis-

sition of the military commandants to the exercise of arbitrary authority, and their utter disregard of law in their attempts to subordinate all connected with the armories into complete dependence upon them.

The Ordnance regulations forbid that "any hired or enlisted men engaged in the service of the Ordnance department, at any national armory, ordnance depot, or with any military command, shall be employed for the private benefit of officers or other persons, with or without compensation." They are equally rigid in forbidding the use of tools or materials belonging to the government for like purposes. That there was much looseness in the enforcement of these regulations at the armories, may be seen from the testimony of Adam Rhulman (page 14) and Wm. H. Moore (page 28.) These witnesses testify that the example of their infraction was set by the commandant himself. Not only were various articles for the domestic use of his family manufactured by the men in the shops, and out of the materials belonging to the government, but hired men, placed upon the pay-rolls and paid from the armory fund, were employed as hostlers and servants about the commandant's quarters. It will be hard to find any evidence of such flagrant abuses under the superintendence of civilians.

#### OPPRESSIVE CONDUCT TOWARDS THE WORKMEN.

The very numerous complaints which have been made in many quarters of the overbearing and oppressive conduct of the military commandants toward the workmen under their charge, are not wholly without foundation. Although all the officers who have had control of the armories in the last twelve years have not manifested this disposition to tyrannize over the workmen, it is, nevertheless, hardihood to deny, that, for a larger portion of that time, men have been in command whose temper and bearing, united with their professional habits of exacting instant submission to all orders, whether just or unjust, rendered their administrations especially offensive to the mechanics and others under them. The conduct of which complaint is made does not always manifest itself in open acts of wrong and oppression which may be seen, and felt, and described; but by many little acts of tyranny, which show themselves in the haughty air, vexatious and unnecessary orders, petulant temper, and a thousand annoyances which can only be realized and understood by those who are unfortunately the victims of them. The effect of such conduct upon the men is, to destroy their manly independence, to weaken their self-respect, their self-reliance, and their attachment to the institutions of the country. This is too productive of a more extensive evil, and one which may be realized at no distant day in a popular demand for the entire abolition of the Ordnance department, as now organized, and a complete subjection of the duties thereof to civil control. Already is the excitement in the popular mind assuming an intensity which it may not be easy to subdue. This excitement has arisen partly from an instinctive jealousy upon the part of our free citizens to military rule in any of its forms, but chiefly from a too certain knowledge of the fact that some of the military commandants at the national armories have used their power to oppress and do injustice to the workmen under them. The officers of the ordnance corps who cling with pertinacious and

unyielding force to the control of these national workshops would do well to heed the warning which this excitement brings. Public sentiment in this country possesses a stern power, which even the stubborn tenacity of the Ordnance department may not be able to resist.

Your committee refer to the testimony of Messrs. Moore, Rhulman, Hobbs, and Kitzmiller, for instances of oppression and outrage upon the rights of the workmen, perpetrated by the military commandants, well calculated to excite the honest indignation of every freeman who reads them. The first to which it is proper to refer occurred at a very early period of the military rule at Harper's Ferry, and was the first provocative cause of that odium in which the system of military superintendence has been held by armorers and citizens ever since. It seems that a portion of the workmen became dissatisfied with what they considered an unnecessary and arbitrary rule, or verbal order, promulgated by the commandant; and finding that remonstrance produced no effect in securing its change or modification, several of them came to Washington, to lay the matter before the President. For this the men were summarily discharged. The result was great distress and suffering among them; and, under the terror of not being allowed to return to work, even under the obnoxious rule, they were compelled to submit to the humiliating alternative of losing a support for themselves and families, or subscribe a pledge dictated by the commandant and binding them to refrain from the exercise of a part of their undoubted civil rights—the rights of freely expressing their opinions on the subject of the armories, and of remonstrating against wrong when inflicted. These were the degrading conditions imposed upon respectable mechanics, before they were allowed to return to work, when their only offence had been to remonstrate against what they honestly deemed to be wrong and injustice. Some of them, from necessity alone, were compelled to submit to it, humiliating and degrading as it was.

Scarcely less unjustifiable and oppressive was the practice, referred to and explained by the same witnesses, which was indulged by the military commandants, of arbitrarily reducing the wages earned by the workmen after the work had been executed, inspected, and approved; and that, too, without previous notice to the workmen. Repeated instances of this kind occurred, and are well established. The prices were regulated beforehand according to rates fixed and published to the workmen. The work was executed by the men in view of these prices, and with the full expectation of receiving them. The inspectors kept accurate accounts of the labor of each man, and at the end of the month returned to the commandant the rolls showing the value of what each had produced. If, by superior dexterity, industry, or other cause, a workman had earned more money than the commandant thought was an average month's allowance, he would, without hesitation, take off a part of the price, and thus deprive him of a portion of what he had honestly earned. Against this tyranny there was no remonstrance. Appeals for redress were of no avail. The penalty of discontent, under such wrong, would have been instant dismissal. Such is the power, and such the mode of using it, which these military commandants are allowed to exercise. No wonder that dissatisfaction prevails among the workmen, and excitement has been aroused in the public mind. Mr.

Iobbs, who was one of the victims of this tyranny, quit the establishment rather than remain subject to such wrongs in the future.

There can be no mistaking the motive for which these arbitrary and unwarranted reductions of the wages of workmen, fairly earned, were made. It was a part of that system of economy which looked to a good showing in the cost of the arm at the expense of the workmen. It was part of that system of economy which first cut down the tariff of rices, and then taxed the workmen with the cost of "*oil and files*." It was a part of that system of economy which saved from the hard earnings of the workmen, to enable the officers to expend the more upon being own comfortable quarters.

For the course of the superintendent at Springfield towards the men under his control, your committee refer to the testimony of Governor Steele, who not only well exposes a part of the system there pursued, but gives some insight into the effect which it has produced among the workmen, whose sentiments in regard to military rule he obtained immediately from the men themselves. The dismissal of workmen at Springfield, for no other reason than because they had borne testimony before the commission sent there by the President against the military system of superintendence, and in the very teeth of the President's assurance that they should be protected from oppression if they did testify, is an instance of high-handed wrong and contempt of the rights of citizens almost without parallel. The testimony of Governor Steele, upon page 43, explains this case fully, and is referred to as illustrating the oppressive system which prevails at that armory, as well as the temper and spirit with which the commandant bears himself under those circumstances which touch the permanency of his position at that desirable post.

#### CONCLUDING REMARKS.

By the act of March 3, 1853, the President was authorized, if in his opinion the public interest demanded it, to place over any of the armories a superintendent who did not belong to the army; and to enable him to decide, he was authorized, through the medium of a commission composed of civilians and military men, to institute an inquiry as to the efficiency, economy, and safety of the two modes of management. In pursuance of this authority, a commission, composed of four eminent civilians and two officers of the army, was established, who repaired to Springfield, and after a laborious and patient inquiry into all questions bearing upon the subject, closed their investigations and made their reports to the President. The separate reports of the commissioners, the journal, and a small portion of the testimony taken before the board, are printed with the evidence of your committee, and are referred to for the result of that inquiry. The Hon. Andrew Stevenson, Chancellor Walworth, Governor Steele, and Mr. Smith, the four civilians upon the commission, made strong reports to the President recommending a restoration of the civil superintendency; the two officers of the army, Colonels Andrews and Steptoe, reported against the removal of the military officers. The President had not acted upon these reports when the subject of the armories, with other matters relating to military superintendence of civil works, was referred to your committee.

tee; but the President, upon application, very promptly submitted to the committee the reports and testimony taken before the commission. The reports of the civilians are able and conclusive, and the result arrived at fully sustained by the testimony. Those of Mr. Stevenson, of Virginia, and Chancellor Walworth, of New York, are referred to as especially worthy of attentive consideration, as setting forth with much clearness and power the many forcible reasons which exist in favor of the change recommended.

Your committee are constrained to believe, after a full and thorough consideration of the subject in all its aspects, that it is neither "compatible with the public interest," nor "consistent with the nature and character of our civil government," that these important national manufacturing establishments should remain longer under the management of officers belonging to the military department of the government. It is not "compatible with the public interest," because they cannot be managed under military rule with the same economy and efficiency that they would be under competent civilians of practical ability and experience in the management of manufacturing establishments, and owing immediate accountability to the President of the United States. Civilians who would receive these appointments would be men of business experience, as well as practical ability, and would not only manage the operations of the armories with more economy than military men, trained to different pursuits, but, from their superior knowledge of manufacturing, and of the means of combining and distributing labor to produce the best results, would develop and enlarge the efficiency of the establishments to a much greater extent than could be done by military men, whose theoretic acquirements, unaided by practical business habits and skill, are of little avail for these purposes. It is "not consistent with the nature and character of our civil government," that large masses of the mechanics of the country should be placed under the command of officers of the army, bred to purposes of war, and whose education and habits partake of the arbitrary characteristics of the camp. It is said that military rule does not prevail in the management of the men at the armories. True, they are not drilled like soldiers; they are not required to do other duties exacted from enlisted men in the regular army; but in all that regards the bearing of the commandant towards these men, in his intercourse with them, and in the regulation of their duties, the habits of military command and authority are brought into constant requisition. Men are discharged from the establishments, and driven, sometimes at great inconvenience and sacrifice, to seek employment elsewhere, not for any well established offence which has been properly investigated, and against which they have been permitted to defend themselves, but because the commandant, in his impersonation of a system, arrogates to himself the right to discard evidence and act without question. In defending himself against charges of arbitrary conduct in this respect, the present commandant at Springfield said, in his printed argument: "The responsibility of judging is thrown upon me, and *I am bound to exercise it. I am compelled to judge from my own observation, and not to act upon evidence which I must treasure up with care,*" &c. The court of inquiry before whom he was tried, in justifying his dismissal of workmen,



reaffirms this odious doctrine, and says: "In so performing his duty, he could not fail to find it his duty to discharge persons from the armory on the slightest exhibition of insubordination or *discontent*, especially as such exhibition had a direct reference to his personification of a system, and the measures he adopted to enforce habits of order and industry in the performance of work." Insubordination and discontent, in military parlance, are grave offences; but in the workshops of American mechanics they have an entirely different signification. The workman whose wages had been curtailed unjustly and arbitrarily, after his work had been completed, inspected, and approved, for complaining of the outrage, would, by military rule, be deemed insubordinate; but in civil employment, would be regarded only as asserting his undoubted rights, and might enforce them in courts which respect and protect such rights. A man who expresses his honest convictions in regard to any branch of governmental policy, is only in the exercise of a civil right guaranteed to him by the highest sanctions of the constitution; but if that expression of opinion relate to the military supervision over the armories, the doctrine of the court of inquiry makes it "insubordination" and "discontent" worthy of punishment. No such practice prevails in the private establishments of the country, and no such doctrines are approved by the enlightened good sense of the American people.

The country affords a wide field for the selection of experienced, well qualified civilians of high character, to occupy these places. Men of sterling integrity and superior qualifications, for a period of forty-seven years, did administer the affairs of the armories, not only with great fidelity and economy, but with great good order and efficiency. The great length of time they retained their positions, and the few changes which were made, are proof that their administrations were unaffected by political considerations. There is no reason to believe that any serious evil would result from such a cause, if the armories should be restored to the old policy. The government has, in the tenure of a civilian's appointment, the same protection against the continuance of any mal-administration of the affairs of the armories, that it has against like evils in any other branch of civil service. If evils are tolerated, the President may instantly remove the superintendent and secure greater fidelity by another appointment. Not so, however, with the army officer. A convenient means of defence in his case is the calling of a court of inquiry, where the delinquent has not only the advantage of military ideas of administrative affairs, which allow latitude of expenditure and rigor of discipline, such as your committee have exposed in another part of this report, but of that *esprit du corps* which frequently interposes to protect and shield a brother officer against the (no matter how well-grounded) complaints of mere civilians. The court of inquiry referred to above, is a good exemplification of the utter uselessness of such tribunals in the investigation of matters relating to civil service.

Such is the state of public opinion in regard to the propriety of a change of superintendence at the armories, as shown by the numerous memorials before the committee from various parts of the Union, and the tone of the public press which has spoken upon the subject, that

there can be but little hope of peace and quiet until the change is effected. There is a growing dissatisfaction all over the country, at the extent to which the practice of investing military officers with authority over mechanics in civil pursuits has been carried of late years. The fact that military supervision is submitted to by many workmen, is no evidence that it is approved, or reason why it should be continued. The necessities of this worthy class of American citizens are sometimes such that they are compelled to submit to that which, under less pressing circumstances, they would revolt at and resist. But, is it not the imperative duty of a liberal and just government to respect the wishes of this useful and patriotic class of men, and spare them from the humiliation which their necessities alone compel them to endure? Its own interests and public opinion alike demand it. What is there in the character or education of a military officer that better qualifies him for the management of the intricate details of mechanical branches of business, than a civilian trained and experienced in these pursuits? It is clearly not because he has any higher regard for the laws—that he has more integrity, or is more frugal in the management of funds. Surely the military administration of the armories for the last twelve years does not exhibit these traits so palpably as to warrant such an assumption. It is not that he is better qualified to judge of the quality of materials, or of the character of the work when executed. The testimony of Capt. Maynadier shows that, in this respect, practical men have decidedly the advantage of a military officer. It is not that he knows better how to organize labor, or direct the operations of artisans so as to produce the best results. This is not shown by the evidence of any witness qualified to judge. It is not that his manner and bearing are such as to make him more acceptable to, and influential with, the workmen. The dissatisfaction among the armorers, the constant disquiet and excitement which prevails not only in, but outside of, these establishments, are convincing proofs that his superior adaptation, in that respect, to this kind of civil service, does not in truth exist. If not in any of these qualities, in what, pray, does his superiority exist? Your committee have no disposition to underrate the capacity of the ordnance corps in the proper and legitimate line of their professional duties, but are constrained to say that no considerations of good policy or public interest will justify their continuance in the control of the national armories.

The other matters of inquiry submitted to the committee by the resolution of the House are reserved for future report. The adoption of the bill providing for a restoration of civil superintendence at the armories, herewith reported, is recommended by the committee.

R. H. STANTON, *Chairman*.

W. R. SAPP.

CH. JAS. FAULKNER.

JOSHUA VANSANT.

**NOTE.**—The following tables were carefully prepared from the data furnished by the reports of the War Department to Congress, and the testimony of Mr. George Bender, a clerk to the Ordnance department, given before the committee.

MICH. W. CLUSKEY, *Clerk to Committee*.

## APPENDIX.

## A.

*Statement of expenditures at the Springfield armory, from its establishment in 1794 to March 31, 1841, a period of about forty-seven years.*

*Statement of expenditures at the Harper's Ferry armory, from its establishment in 1794 to March 31, 1841, a period of about forty-seven years.*

Years ending—	For lands, buildings, new machinery, &c.	For manufacture of arms, including tools, repairs of machinery, models, salaries, &c.	Fiscal years ending—	For lands, buildings, new machinery, &c.	For manufacture of arms, including tools, repairs of machinery, models, salaries, &c.
1795	\$425 00	\$4,070 75	1796	\$7,016 66	.....
1796	100 00	15,298 25	1797	10,000 00	.....
1797	120 00	18,743 80	1798	3,028 53	\$1,339 90
1798	2,403 21	16,754 19	1799	14,565 00	9,520 49
1799	2,909 62	81,389 69	1800	20,058 14	11,397 12
1800	688 95	64,240 49	1801	7,286 89	19,914 92
1801	2,436 25	47,892 69	1802	6,211 89	23,222 44
1802	390 89	29,751 66	1803	6,620 45	22,076 95
1803	1,342 18	31,098 23	1804	6,783 81	24,529 90
1804	2,515 29	40,741 22	1805	4,813 49	26,448 68
1805	4,570 79	41,376 32	1806	14,185 63	27,723 17
1806	7,802 50	34,803 44	1807	10,127 66	30,503 62
1807	10,061 49	45,269 89	1808	43,012 19	61,940 44
1808	31,684 09	71,490 62	1809	39,963 47	118,871 66
1809	17,689 80	104,779 51	1810	16,679 45	128,362 85
1810	1,855 37	129,715 10	1811	12,173 42	127,532 17
1811	818 86	113,685 00	1812	13,765 06	148,006 95
1812	11,811 64	128,166 39	1813	34,499 80	170,074 80
1813	1,595 71	113,890 32	1814	5,437 14	138,573 67
1814	544 30	101,771 42	1815	3,244 72	122,091 10
1815	1,000 00	150,466 37	1816	7,743 00	219,543 87
1816	2,472 00	152,741 88	1817	9,299 89	161,600 33
1817	6,975 00	150,015 06	1818	13,903 57	179,031 17
1818	3,000 00	169,937 69	1819	14,336 32	164,679 14
1819	4,336 00	168,307 77	1820	22,099 02	154,089 00
1820	9,174 75	170,160 90	1821	19,374 81	143,763 00
1821	5,900 00	167,696 92	1822	5,484 75	149,701 84
1822	7,801 68	172,416 91	1823	11,037 80	173,513 14
1823	5,375 27	176,612 74	1824	16,271 96	179,917 98
1824	21,909 78	165,158 29	1825	6,273 00	184,517 04
1825	8,873 16	171,109 87	1826	10,279 63	157,034 73
1826	10,973 29	169,291 04	1827	7,550 87	196,469 82
1827	19,822 28	157,528 26	1828	12,033 00	185,572 62
1828	13,476 99	173,598 32	1829	11,501 10	177,897 75
1829	6,655 82	176,040 29	1830	12,732 46	155,656 01
1830	20,100 21	186,605 73	1831	15,944 76	171,772 37
1831	10,946 87	185,073 75	1832	8,848 21	214,496 73
1832	6,442 58	176,207 00	1833	36,304 12	172,696 27
1833	18,083 76	178,136 22	1834	45,055 18	178,885 05
1834	28,880 20	173,262 03	1835	23,088 60	157,714 15
1835	19,687 00	141,845 41	1836	15,246 75	129,328 26
1836	28,443 46	159,159 08	1837	75,849 37	222,341 05
1837	23,570 84	200,594 92	1838	52,324 34	162,879 65
1838	2,699 03	185,121 85	1839	26,752 49	155,634 93
1839	6,956 59	121,890 10	1840	32,556 20	145,509 67
1840	13,844 06	121,642 51	1841, March 31	17,842 28	73,081 63
31, 1841	2,211 47	117,823 25			
Total.....	411,378 03	5,673,373 06	Total.....	809,156 88	5,630,610 03

*Statement of the expenditures at the Springfield armory from September 30, 1841, to June 30, 1853.*

*Statement of the expenditures at Ferry armory from September June 30, 1853.*

Fiscal years ending—	For lands, buildings, and new machinery.	For manufacture of arms, including tools, repairs of machinery, models, salaries, &c.	Fiscal years ending—	For lands, buildings, and new machinery.	For manufacture of arms, including tools, repairs of machinery, models, salaries, &c.
Sept. 30, 1841	\$9,864 33	\$97,846 73	Sept. 30, 1841	\$16,631 91	
1842	15,362 36	140,769 56	1842	28,105 91	
June 30, 1843	15,466 58	63,349 55	June 30, 1843	34,433 65	
1844	38,098 97	101,141 73	1844	35,480 37	
1845	28,341 20	144,706 04	1845	29,686 86	
1846	42,009 19	165,315 38	1846	62,468 77	
1847	76,287 52	177,017 32	1847	55,856 28	
1848	65,911 29	161,632 92	1848	76,673 09	
1849	74,779 83	186,006 67	1849	59,241 86	
1850	37,688 69	145,101 63	1850	42,379 54	
1851	29,528 16	184,202 80	1851	64,231 63	
1852	19,398 38	169,158 23	1852	60,979 25	
1853	28,128 94	169,551 29	1853	48,319 19	
	486,865 44	1,935 800 05		614,498 31	

#### RECAPITULATION.

*Amount of expenditures at the national armories under civil superintendency for from their establishment, in 1794, to March 31, 1841.*

##### AT THE SPRINGFIELD ARMORY.

For lands, buildings, and new machinery.....	\$411,378 03
For manufacture of arms, including tools, repairs of machinery, salaries, &c.....	5,673,373 06
	<u>\$6,084,751 09</u>

##### AT THE HARPER'S FERRY ARMORY.

For lands, buildings, and new machinery.....	809,156 88
For manufacture of arms, including tools, repairs of machinery, salaries, &c.....	5,630,610 03
	<u>\$6,439,766 91</u>

Total amount of expenditures at both armories..... \$12,524,518 00

*Amount of expenditures at the national armories under military superintendency for a quarter years, from March 31, 1841, to June 30, 1853.*

##### AT THE SPRINGFIELD ARMORY.

For lands, buildings, and new machinery.....	\$486,865 44
For manufacture of arms, including tools, repairs of machinery, salaries, &c.....	1,935,800 05
	<u>\$2,422,665 49</u>

## AT THE HARPER'S FERRY ARMORY.

For lands, buildings, and new machinery .....	\$614,498 31	
For manufacture of arms, including tools, repairs of machinery, salaries, &c.....	1,937,641 29	
		\$2,552,139 60
Add for pay and emoluments of officers in command, drawn from the army appropriations.....		72,000 00
Total amount of expenditures at both armories.....		<u>5,046,805 09</u>
Average amount spent each year under military system.....	\$411,984 09	
Average amount spent each year under civil system.....	266,479 10	
Difference in favor of civil system .....		<u>145,504 99</u>
Amount spent for forty-seven years, under civil system, for lands, buildings, &c.....	\$1,220,534 91	
Amount spent for twelve and a quarter years, under military system, for lands, buildings, &c .....	1,101,363 74	
Amount spent for forty-seven years, under civil, for manufacture of arms, tools, &c.....	11,303,983 09	
Amount spent for twelve and a quarter years, under military, for manufacture of arms, tools, &c.....	3,873,441 34	

Muskets.....	447,126
Rifles.....	550
Shotguns.....	1,000
Carbines.....	1,300
Cadet arms.....	500
Value of repaired arms in new muskets.....	11,500
<b>Total amount of arms made under civil at Springfield .....</b>	<b>451,476</b>



*Aggregate amount of expenditures at, and products of, the national armories, from their commencement in 1794 to March 31, 1841, forty-seven years.*

Expenditures at the Harper's Ferry armory.....	\$6,084,
Expenditures at the Springfield armory.....	6,438,
Total amount of expenditures.....	<u>12,524,</u>
Number of arms made at the Harper's Ferry armory.....	1
Number of arms made at the Springfield armory.....	4
Total amount of products at both armories.....	<u>5</u>
Cost of each arm, according to the above aggregates of expenditures and products for forty-seven years, under civil superintendency.....	

*Aggregate amount of expenditures and products of the national armories from March 3 to June 30, 1853, twelve and a quarter years.*

Expenditures at the Harper's Ferry armory....	\$2,552,
Expenditures at the Springfield armory....	2,492,
Add for pay, &c., of commandant, drawn from army appropriations.....	72,
Total amount of expenditures.....	<u>5,046,</u>
Number of arms made at the Harper's Ferry armory.....	:
Number of arms made at the Springfield armory.....	:
Total amount of products at both armories.....	<u>:</u>
Cost of each arm, according to the above aggregates of expenditures and products for twelve and a quarter years, under military superintendency.....	
Cost of arm under military superintendency.....	
Cost of arm under civil superintendency.....	
Difference in favor of civil system.....	<u></u>

### B.

Since the foregoing report was prepared, the committee has furnished by the Secretary of War with the subjoined statement exhibiting the cost of the commandants' quarters at the Harper's Ferry and Springfield armories. The amount expended for these structures determined by the officers at the armories, is:

At Harper's Ferry .....	\$19,3
At Springfield.....	23,7

If the "three parcels of land" referred to in note 2 of the field statement (\$3,115) be charged to the commandant's quarters at that place, it will make the total cost \$28,888 87. Since 1830, as be seen from the statement of the Treasury Department, page 1 of printed testimony, there has been expended at Springfield, for the enlargement of the grounds, \$50,879 53. Of this amount, \$44,6 has been expended since the destruction of the old and the building of the present quarters.



In 1845 the commandant at Harper's Ferry submitted to Congress an estimate for the building of new quarters, amounting to \$9,539. The old quarters, being situated "in the vicinity of the shops," were deemed "unsuitable" for the commandant's dwelling. Congress thought differently, and refused to authorize the construction of new buildings, and made no appropriation for that purpose. The commandant, nevertheless, commenced their erection, and before the appropriations of the next year were made had expended several thousand dollars. In 1846 he asked for the appropriation of \$15,000 "for quarters of the commanding officer, and for paymaster and storekeeper." This was granted by Congress, but no subsequent appropriation has been made for the commandant's quarters, and the excess of expenditure over the original estimate of \$9,539 has been taken from appropriations made for other purposes.

The testimony of Mr. Kitzmiller, the clerk at that armory, will show with what latitude this practice of applying funds intended for one purpose to others entirely different is carried by the military superintendents. An important work, for which money has twice been appropriated, remains, in consequence of this practice, unfinished and scarcely commenced. The clerk says, page 50, printed testimony: "If the appropriations had been applied for the purposes intended, *there would be no money wanting now*. I mention these facts to explain the *embarrassment* of the funds of the appropriation for repairs, &c., at the present time."

The sum of \$39,500 is asked for the present year, by the Ordnance department, for certain enumerated improvements at Harper's Ferry, several of which are actually constructed, paid for out of funds already appropriated, and are now in use! The money, if obtained, will be applied, not to the purposes stated in the estimates submitted to Congress, but to other improvements not named. The estimates, therefore, are false and delusive, and, taken in connexion with the fact that no separate accounts of the specific application of the funds are returned to the Ordnance department from the armories, show a looseness of management reprehensible in the highest degree.

In the estimates of the commandant at the Springfield armory for the year ending June 30, 1845, is the sum of \$12,000 "for rebuilding quarters of the commanding officer." The whole amount for special purposes asked for is \$46,300. Congress refused to appropriate this amount, and granted for that year only \$25,000. For the next year, ending June 30, 1846, \$12,000 "for rebuilding quarters for superintendent" was again asked for, with other sums amounting to \$94,000. This sum Congress reduced to \$29,500, thus a second time refusing to sanction estimates including a sum for rebuilding the commandant's quarters. In the subsequent year no appropriation was asked for this purpose, and none has been granted since.

To make the matter more clear, and to show exactly what the commandant asked for and what Congress granted, the estimates and appropriations are here given:

## ESTIMATES FOR YEAR ENDING JUNE 30, 1845.

1. For rebuilding quarters for commanding officer.....	\$12,000
2. For rebuilding "new gate" at middle privilege, and for new water-wheel and flume in connexion therewith..	10,000
3. For purchase of a lot belonging to H. J. Wood, adjoining the public ground at the upper water-shop, containing about three acres.....	1,300
4. For two large reservoirs on the hill, and for one at the upper water-shops.....	3,000
5. For repairs and improvements.....	7,000
6. For new machinery.....	13,000
	<hr/>
	46,300
	<hr/>

## APPROPRIATION FOR YEAR ENDING JUNE 30, 1845.

For repairs and improvements and new machinery at Springfield armory.....	\$25,000
	<hr/>

## ESTIMATES FOR YEAR ENDING JUNE 30, 1846.

1. For rebuilding quarters of superintendent.....	\$12,000
2. For enclosing all the public ground on the hill lying north of State street and west of Franklin Square, with a high and permanent fence.....	18,500
3. For rebuilding "new gate," so called, at the middle privilege, on Mill river.....	13,000
4. For renewing water-wheels and hammers, and raising the new gate-dam one foot.....	4,500
5. For addition to the barrel-welding shop, and a new water-wheel and flume for the same.....	6,000
6. For the purchase of a parcel of ground belonging to H. J. Wood, containing about four acres, with several other small parcels adjoining the armory grounds....	5,000
7. For making new and repairing old machinery.....	15,000
8. For repairs and improvements.....	20,000
	<hr/>
	94,000
	<hr/>

## APPROPRIATION FOR YEAR ENDING JUNE 30, 1846.

For repairs and improvements and new machinery at Springfield armory.....	\$29,500
	<hr/>

This appropriation included the following items:

For removing water-wheels and hammers, and raising the new gate-dam one foot.....	\$4,500
For the purchase of a parcel of ground belonging to H. J. Wood, containing about four acres, &c.....	5,000
For repairs and improvements.....	20,000
	<hr/>
	29,500
	<hr/>

It will be thus seen that Congress twice rejected the estimates for the building of the commandant's quarters, and refused to appropriate more money than was absolutely necessary for the usual and ordinary purposes of the armory. But notwithstanding this, the commandant proceeded in the construction of the buildings, upon a scale and in a style which Congress under no circumstances would have approved. In truth, by reference to the dates of the subjoined statement, it will be seen that the old buildings had been destroyed and the new ones commenced before even an appropriation had been *asked for!* The old buildings are described by Colonel Robb, in his testimony, pages 18 and 19, as the best he ever occupied, and "*fit for a Secretary to live in.*"

It will appear by the notes appended to the statement from Harper's Ferry, that the several items which make up the cost of the quarters at that place are not taken from any regular account kept of the expenditures for that specific purpose, but are derived from various sources. They are made up from reports of the master-builder, extracts from the vouchers, materials identified in other accounts as issued for that object, and cost of labor obtained from the foreman's monthly returns of work done. The statement from Springfield is more in detail, but not the more satisfactory on that account. It is presumed the same mode of keeping the accounts is observed at both armories; and but little reliance can be placed upon the statement from either source, as exhibiting the actual expenditures upon the quarters of the commandant.

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WASHINGTON, D. C., May 17, 1854.

SIR: I am directed by the select committee on the subject of military supervision of civil works, to request, for the use of the committee, if the records of your department furnish such information, the full cost of the commandants' quarters at Springfield and Harper's Ferry, embracing cost of removal of old quarters, labor and materials used in the construction of the new ones, cost of additional land, if any, purchased to enlarge grounds connected therewith, improving and embellishing grounds, enclosing the same, conveying water, and all other expenses incurred upon said buildings to the present time. If separate accounts of the expenditures have not been returned to the department, please advise the committee.

With respect, your obedient servant,

R. H. STANTON, *Chairman.*

Hon JEFFERSON DAVIS,

*Secretary of War.*




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WAR DEPARTMENT, WASHINGTON,

May 20, 1854.

SIR: I have received your letter of the 17th instant asking to be informed of the cost of the commandants' quarters at Springfield and Harper's Ferry armories, &c., &c.; and, in reply, have the honor to transmit you a report of the Colonel of Ordnance, from which you will

perceive that the records of the department do not furnish the information asked for, but that measures will be taken to obtain it from the armories, if possible.

Very respectfully, your obedient servant,

JEFFN. DAVIS,  
*Secretary of War.*

HON. R. H. STANTON,  
*Chairman Select Committee, House of Representatives.*

ORDNANCE OFFICE, WASHINGTON,  
May 20, 1854.

SIR: I have to acknowledge the reference to this office of the Hon. R. H. Stanton's letter of the 17th instant, requesting, for the use of the select committee on the subject of military supervision over civil work, information of the full cost of the commandants' present quarters at Springfield and Harper's Ferry, embracing cost of removal of old quarters, and many other particulars specified in the letter, and in answer to state: There are no separate accounts of the expenditures for the various items mentioned in Mr. Stanton's letter, on the files of this office. The expenditures having been made from general appropriations "for repairs and improvements" at the armories, and not from specific appropriations for the several items, separate accounts were not required by the treasury regulations to be kept or rendered. Such accounts may have been kept at the armories, concerning which inquiry will be at once made, and the result will be communicated in a future report.

Mr. Stanton's letter is returned herewith.

I am, very respectfully, your obedient servant,  
H. K. CRAIG,  
*Colonel Ordnance.*

HON. JEFF. DAVIS,  
*Secretary of War.*

WAR DEPARTMENT, WASHINGTON,  
June 7, 1854.

SIR: Referring to the letter of this department of the 20th ultimo in answer to yours of the 17th ultimo, I have the honor to transmit you in report of the Colonel of Ordnance enclosing detailed statements of the cost of the commandants' quarters at Springfield and Harper's Ferry armories.

Very respectfully, your obedient servant,

JEFFN. DAVIS,  
*Secretary of War.*

HON. R. H. STANTON,  
*Chairman Select Committee, House of Representatives.*

## ORDNANCE OFFICE, WASHINGTON,

June 3, 1854.

RE: Referring to my letter to you of the 20th May last, in answer to the Hon. R. H. Stanton's call for information (for the use of the select committee on the subject of military supervision over civil works) of the full cost of the commandants' present quarters at Springfield and Harper's Ferry, I enclose statements, numbered 1 and 2, giving all information called for in detail.

The expenditures for the objects stated were made from appropriate and legally and properly applicable thereto, and are less than the total amount that might have been legally so applied.

Respectfully, your obedient servant,

H. K. CRAIG,

Colonel Ordnance.

DR. JEFF. DAVIS,

Secretary of War.

No. 1—*Harper's Ferry Armory.*

A.—*Commanding officer's quarters.*

6.			
31	To William Collins.....	8	\$1,007 23
	window sills, and vouchers .....	16	1,645 83
	freight.....	9	24 41
31	To labor and materials in August.....	6	321 83
30	To labor and materials in September.....	9	453 12
31	To labor and materials in 4th quarter 1846.....	12	3,951 73
17.			
31	To labor and materials in 1st quarter 1847.....	18	1,305 11
	vouchers paid.....	20	645 37
30	To vouchers paid, 6 and 22 .....	22	37 28
	transportation for April .....	22	1 50
	transportation for May.....	23	2 17
	labor and materials; vouchers .....	23	884 64
	labor and materials in 2d quarter 1847.....	25	3,306 10
			<u>13,586 32</u>
30	To labor; voucher.....	35	64 75
	labor in 3d quarter .....	38	995 46
	material in 3d quarter.....	38	220 22
31	To labor, 4th quarter; vouchers.....	48	642 22
	labor.....do.....do.....	52	242 26
	material...do.....do.....	52	147 08
18.			
31	To labor, 1st quarter .....	63	35 35
	material...do.....	63	12
30	To labor, 2d quarter.....	74	79 58
	materials...do.....	74	35 31
	labor.....do.....voucher.....	78	166 07
	transportation.....do.....	78	25
			<u>2,628 67</u>

## A—Continued.

1848.			
Sept. 30	To labor; vouchers.....	86	
	labor; rolls.....	94	
	materials, 3d quarter.....	94	
Dec. 30	To labor; rolls.....	99	
	materials, 4th quarter.....	99	
1849.	labor; vouchers.....	104	
Jan. 31	To material.....	108	
Mar. 31	To labor; voucher.....	109	
June 30	To labor....do.....	118	
	labor; rolls.....	116	
	materials.....	118	
	labor; voucher.....	117	
	material.....	118	
	Aggregate.....		16

## B.—Commanding officer's quarters.

June 30, 1846.—12½ days' work, at \$1 35.....	
7.....do..... at \$2 50.....	
114 panels paling fence, at 45 cents.....	
6,016 feet paling laths, at 1½ cent.....	
265 panels fence, at 50 cents.....	
759 chestnut posts, at 6 cents.....	
32,419 feet oak timber, at 1½ cent.....	

Enclosing grounds.....

## C.

1851, 2d quarter.—Voucher No. 69.....	
3d quarter.—Voucher No. 54.....	
4th quarter.—Voucher No. 17.....	
Voucher No. 30.....	
Voucher No. —.....	
1852, 1st quarter.—Voucher No. 52.....	
1853, 2d quarter.—Voucher No. 73.....	

## D.

1851, December.—Value of stock.....	
1852, March.—Value of stock.....	
1852, June.—Value of stock.....	

Outside store-rooms.....

\*Outside store-rooms.

## E.

1850.—Labor, or returns of work.....	\$176 26
1851.—Labor, or returns of work.....	*343 96
1852.—Labor, or returns of work.....	500 70
1853.—Labor, or returns of work.....	†133 33
	<u>1,153 23</u>

## F.

1854, May.—Supposed cost of outside privy when finished.....	<u>\$50 00</u>
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## RECAPITULATION.

Statement A.....	\$16,684 42
Statement B.....	840 23
Statement C.....	283 87
Statement D.....	321 06
Statement E.....	1,153 23
Statement F.....	50 00
	<u>19,333 41</u>

Whence cost of following items is—

First. Enclosure of grounds.....	\$840 23
Second. Outside store-rooms.....	630 84
Third. Stable-shed.....	82 49
Fourth. Outside privy.....	50 00
Fifth. Main building and cistern, with stable.....	17,679 86
	<u>19,333 41</u>

## NOTES.

1. The above is the full cost, according to the books and records of this armory—the repairs for ordinary wear and tear not being included.
2. No quarters have been removed, and no grounds purchased for this purpose.
3. All the embellishments of grounds in this case, including fruit-trees, shrubbery, &c., appear to have been purchased by Major Symington out of his private means, forest trees having been very properly planted by public labor.

*Records referred to in the foregoing statement.*

- A.—A transcript from ledger A of the old system of books, page 69, from July 1, 1846, to June 30, 1849, for materials and labor during that period.
- B.—A transcript from the report of Mr. Fuss, master-builder, for the year ending June 30, 1846, for the enclosure.
- C.—Extract from the vouchers between June 30, 1849, and April 1, 1854, being for labor.
- D.—Materials consumed for the commanding officer's quarters as exhibited in stock-book of new system, and identified as issues solely for this object; pp. 41, 42, ledger A.
- E.—Labor, obtained from the foreman's monthly returns of work done, for the years 1850, 1851, 1852, and 1853; the amount under this head being given in the aggregate for each year.
- F.—Estimated amount of labor and materials to this date on outside privy; amount not yet exactly known, but supposed to be about \$50 when finished.

\* Outside store-rooms, \$135 80.

† Stable-shed, \$32 49.

No. 2.—*Labor and materials expended in constructing commandant's quarters at Springfield armory.*

Date.	Labor and stock.	Time, &c.	Price.	Am
	Commenced in May, 1844, and in progress June 30, 1845: cost to that time, including drafting, lumber, stone materials of all kinds, and labor.....			\$3,
1845.				
July.....	J. D. Lord..... services	2.... days	\$2 50	
	E. Alden..... do	8½.... do	1 62	
	S. Leonard..... do	8½.... do	1 40	
	F. Vinson..... do	7½.... do	1 75	
	W. Brooks..... do	26.... do	1 75	
	M. Gilley..... do	25½.... do	1 00	
	M. McIntyre..... do	11½.... do	1 00	
	J. Kaho..... do	9½.... do	1 75	
	J. Haragen..... do	24½.... do	1 00	
	B. Forbes..... do	5.... do	1 50	
	J. Walton..... do	26.... do	1 00	
	J. Welch..... do	24.... do	1 75	
	R. Padden..... do	3.... do	1 75	
	J. Gribbin..... do	26.... do	1 75	
	F. Stevenson..... do	22.... do	1 75	
	W. Hill..... do	9½.... do	1 50	
	P. Riley..... do	7.... do	1 25	
	N. McGregory..... do	20½.... do	1 75	
	J. Smith..... do	25½.... do	1 75	
	F. S. Groves..... do	25.... do	2 00	
	M. Purtall..... do	25½.... do	1 00	
	A. Burt..... do	22.... do	1 75	
	C. Collins..... do	19.... do	1 75	
	C. Rogers..... do	3½.... do	1 75	
	M. Allen..... do	4.... do	1 75	
	A. Alden..... do	½.... do	1 50	
	C. Hall..... do	13.... do	1 75	
	P. Galvin..... do	15½.... do	1 75	
	J. Kidd..... do	15.... do	1 75	
	J. W. Hunt..... do	9½.... do	1 75	
	C. Hastings..... do	9½.... do	1 75	
	A. Burt..... do	9½.... do	1 75	
	Wm. Hunt..... do	10.... do	1 75	
	D. McLeod..... do	9½.... do	1 75	
	F. A. Strong..... do	2½.... do	1 75	
	Iron, No. 7.....	91.... pounds	35	
	Lime.....	15,715 pounds	cwt. 37	
	Bricks.....	100,000....	4 50	
	Ash doors.....	1.....	75	
	Oven doors.....	1.....	1 88	
August....	Lime.....	17,155 pounds	cwt. 37	
	Cooking range.....	1.....	45 00	
	Pressed bricks.....	43,050....	16 00	
	Iron, No. 7.....	125 pounds	35	
	Iron, No. 8.....	56.... do	5	
	H. McFarland..... services	1½.... days	1 75	
	A. F. Strong..... do	½.... do	1 00	
	F. A. Strong..... do	2.... do	1 75	
	E. Alden..... do	1.... do	1 62	
	J. S. Kilgore..... do	1.... do	1 50	
	W. Brooks..... do	26.... do	1 75	
	M. Gilley..... do	26.... do	1 00	
	J. Kaho..... do	22.... do	2 00	
	J. Harragan..... do	14.... do	1 66	



## STATEMENT—Continued.

Date.	Labor and stock.	Time, &c.	Price.	Amount.
1845. August....	J. Walton.....services.....	26...days....	\$1 00	\$26 00
	J. Welch.....do.....	24...do.....	2 00	48 00
	A. McKenzie.....do.....	21½...do.....	2 00	43 00
	J. Gibbins.....do.....	26...do.....	2 00	52 00
	Thos. Stevenson.....do.....	26...do.....	2 00	52 00
	H. McGregory.....do.....	17½...do.....	1 75	30 19
	Jas. Smith.....do.....	25¾...do.....	1 75	45 06
	F. A. Groves.....do.....	26...do.....	2 00	52 00
	M. Purtall.....do.....	26...do.....	1 00	26 00
	A. Burt.....do.....	20...do.....	1 75	35 00
	C. Collins.....do.....	21½...do.....	1 75	38 06
	C. Rogers.....do.....	9...do.....	1 75	15 75
	C. Hall.....do.....	21½...do.....	1 75	38 06
	P. Galvin.....do.....	20...do.....	1 75	35 00
	J. Kidd.....do.....	23...do.....	2 00	46 00
	C. Hastings.....do.....	6...do.....	1 75	10 50
	A. Burt.....do.....	14½...do.....	1 75	25 81
	W. Hunt.....do.....	2...do.....	1 75	3 50
	D. McLeod.....do.....	26...do.....	2 00	52 00
	W. Hill.....do.....	6...do.....	1 50	9 00
	E. P. Welman.....do.....	20¼...do.....	1 25	25 31
	Ash doors.....	4...do.....	71	2 84
	Nails.....	200 pounds....	4½	9 50
	Finishing nails.....	2...do.....	12	24
	Cement.....	2...barrels....	2 50	5 00
	Plaster.....	1...barrel....	3 00	3 00
	Sheet lead.....	162 pounds....	5½	8 30
	Wood screws.....	2...gross....	45	90
	Cast butts.....	36...pounds....	6	2 16
	Boards.....	5,080 feet....	M 16 00	81 28
	Do.....	372...do.....	M 26 00	9 70
	Glass, assorted.....	300 lights....	58 50	58 50
	Tile brick.....	54...do.....	5	2 70
	Pressed brick.....	10, 100.....	M 16 00	161 60
	Common brick.....	129, 009.....	5 50	} 859 17
	Do.....	33, 250.....	4 50	
Sept.....	J. D. Lord.....services.....	6...days....	2 50	15 00
	E. Alden.....do.....	20...do.....	1 62	32 40
	J. S. Kilgore.....do.....	18¼...do.....	1 50	27 75
	T. Vinson.....do.....	19...do.....	1 75	21 00
	N. Brooks.....do.....	26...do.....	1 75	45 50
	M. Gilley.....do.....	22...do.....	1 00	22 00
	J. Kaho.....do.....	26...do.....	2 00	52 00
	J. Harragan.....do.....	7...do.....	1 00	7 00
	B. Forbes.....do.....	13...do.....	1 50	18 00
	M. Shay.....do.....	7...do.....	1 00	7 00
	J. Walton.....do.....	19...do.....	1 00	19 00
	J. Whalen.....do.....	7...do.....	1 00	7 00
	J. Welch.....do.....	15...do.....	2 00	30 00
	Geo. Kendall.....do.....	7...do.....	1 50	10 50
	A. McKenzie.....do.....	13...do.....	2 00	26 00
	T. Stevenson.....do.....	12...do.....	2 00	24 00
	N. McGregory.....do.....	20¼...do.....	1 75	35 44
	J. Smith.....do.....	8...do.....	1 75	14 60
	F. Graves.....do.....	23¾...do.....	2 00	47 50
	M. Purtall.....do.....	7...do.....	1 00	7 00
	A. Burt.....do.....	23¼...do.....	1 75	41 56
	C. Collins.....do.....	7...do.....	1 75	8 06
	P. Clark.....do.....	15...do.....	1 00	15 00

## STATEMENT—Continued.

Date.	Labor and stock.	Time, &c.	Price.	As
1845.				
Sept.....	W. Parker..... services	12... days....	\$1 00	
	C. Hall..... do.....	8 $\frac{1}{2}$ ... do.....	1 75	
	J. Kidd..... do.....	13... do.....	2 00	
	M. J. Sanborn..... do.....	12... do.....	1 50	
	D. McLeod..... do.....	26... do.....	2 00	
	Geo. Humphrey..... do.....	2... do.....	1 75	
	W. Hill..... do.....	1... do.....	1 75	
	Daniel Donovan..... do.....	2... do.....	1 00	
	E. J. Perkins..... do.....	1... do.....	1 50	
	E. Colton..... do.....	4... do.....	1 50	
	M. Taylor..... do.....	1... do.....	1 50	
	J. Greenleaf..... do.....	3 $\frac{1}{2}$ ... do.....	1 50	
	T. Clark..... do.....	$\frac{1}{2}$ ... do.....	1 50	
	Solo. Keef..... do.....	9... do.....	1 50	
	E. Badger..... do.....	$\frac{1}{2}$ ... do.....	1 00	
	H. McFarland..... do.....	$\frac{1}{2}$ ... do.....	1 75	
	F. A. Strong..... do.....	5 $\frac{1}{2}$ ... do.....	1 75	
	A. F. Strong..... do.....	5 $\frac{1}{2}$ ... do.....	1 00	
	E. P. Wellman..... do.....	14 $\frac{1}{2}$ ... do.....	1 25	
	A. Colton..... do.....	1 $\frac{1}{2}$ ... do.....	1 50	
	A. G. Wright..... do.....	2... do.....	1 35	
	Brass castings.....	7 $\frac{1}{2}$ ... pounds...	29 $\frac{1}{2}$	
	Iron, No 7.....	75... do.....	3 $\frac{1}{2}$	
	Iron, No. 5.....	290... do.....	8	
	C. Bradley..... services	4 $\frac{1}{2}$ ... days....	1 63	
	J. McClintock..... do.....	4 $\frac{1}{2}$ ... do.....	1 00	
	Delius Allen..... do.....	$\frac{1}{2}$ ... do.....	1 00	
	Iron, No. 7.....	63 $\frac{1}{2}$ pounds...	3 $\frac{1}{2}$	
	Iron, No. 2.....	95 $\frac{1}{2}$ ... do.....	5	
October...	Nails.....	700... do.....	4 $\frac{1}{2}$	
	Boards.....	10,000.....	16 00	
	Timber.....	27,000.....	15 00	
	J. D. Lord..... services	3... days....	2 50	
	E. Alden..... do.....	16... do.....	1 62	
	J. S. Kligore..... do.....	16 $\frac{1}{2}$ ... do.....	1 50	
	J. Warriner..... do.....	3... do.....	1 40	
	T. Vinson..... do.....	8... do.....	1 75	
	N. Brooks..... do.....	26... do.....	1 75	
	M. Gilley..... do.....	14... do.....	1 00	
	J. Kaho..... do.....	26... do.....	1 75	
	B. Forbes..... do.....	5... do.....	1 50	
	J. Walton..... do.....	5 $\frac{1}{2}$ ... do.....	1 00	
	A. McKenzie..... do.....	25 $\frac{1}{2}$ ... do.....	1 75	
	J. Gribbin..... do.....	23... do.....	1 75	
	J. J. Simmons..... do.....	10... do.....	1 50	
	D. McLeod..... do.....	26 $\frac{1}{2}$ ... do.....	1 75	
	A. Alden..... do.....	6 $\frac{1}{2}$ ... do.....	1 50	
	M. Taylor..... do.....	5 $\frac{1}{2}$ ... do.....	1 50	
	Geo. Greenleaf..... do.....	2... do.....	1 50	
	Loring Hale..... do.....	2... do.....	1 50	
	H. McGregor..... do.....	5 $\frac{1}{2}$ ... do.....	1 75	
	F. Graves..... do.....	3... do.....	2 00	
	A. Burt..... do.....	4... do.....	1 75	
	W. Parker..... do.....	3... do.....	1 00	
	P. Clark..... do.....	15... do.....	1 00	
	M. J. Sanborn..... do.....	10... do.....	1 50	
	A. Burt..... do.....	2 $\frac{1}{2}$ ... do.....	1 75	
	W. Edwards..... do.....	3... do.....	2 00	
	S. Adams..... do.....	3 $\frac{1}{2}$ ... do.....	1 50	

## STATEMENT—Continued.

Date.	Labor and stock.	Time, &c.	Price.	Amount.
1845. October...	E Badger.....services....	½.....day....	\$1 00	\$0 25
	F. S. Foot.....do.....	½.....do.....	1 00	50
	H. McFarland.....do.....	½.....do.....	1 75	44
	F. A. Strong.....do.....	2½.....days....	1 75	4 81
	A. F. Strong.....do.....	2½.....do.....	1 00	2 25
	J. D. Smith.....do.....	3½.....do.....	1 00	3 75
	E. P. Wellman.....do.....	21.....do.....	1 25	26 25
	Iron, No. 5.....do.....	200 pounds...	8	16 00
	Iron, No. 7.....do.....	5.....do.....	3½	18
November.	J. D. Lord.....services....	3.....days....	2 50	7 50
	E. Alden.....do.....	10½.....do.....	1 62	17 41
	J. S. Kilgore.....do.....	11½.....do.....	1 50	17 25
	T. Vinson.....do.....	5½.....do.....	1 75	9 62
	H. Brooks.....do.....	16½.....do.....	1 75	28 88
	John Kaho.....do.....	24.....do.....	1 75	42 00
	Benj. Forbes.....do.....	7.....do.....	1 50	10 50
	John Walton.....do.....	6.....do.....	1 00	6 00
	Alex. McKenzie.....do.....	24.....do.....	1 75	42 00
	John Gribbin.....do.....	20.....do.....	1 75	35 00
	D. McLeod.....do.....	24.....do.....	1 75	42 00
	Albert Alden.....do.....	5½.....do.....	1 50	8 25
	Loring Hale.....do.....	½.....do.....	1 50	75
	A. S. Rollins.....do.....	1.....do.....	1 50	1 50
	Porter Chase.....do.....	4.....do.....	1 50	6 00
	Geo. Greenleaf.....do.....	4.....do.....	1 50	6 00
	E. P. Freeman.....do.....	8½.....do.....	1 25	10 94
	Glass.....do.....	12 lights.....	37½	4 50
	Wood screws.....do.....	3 gross.....	77	2 31
	Boards.....do.....	1,325 feet....	26 50	35 11
	Stone.....do.....	3,959 sup. feet	15	593 85
	Hot-air furnace.....do.....	1.....do.....	92 34	92 34
December.	E. Badger.....services....	½.....day....	1 00	25
	H. McFarland.....do.....	½.....do.....	1 75	44
	F. A. Strong.....do.....	½.....do.....	1 75	44
	A. F. Strong.....do.....	½.....do.....	1 00	25
	E. P. Wellman.....do.....	7½.....days....	1 25	11 69
	E. Alden.....do.....	12½.....do.....	1 62	19 84
	J. S. Kilgore.....do.....	15.....do.....	1 50	22 50
	T. Vinson.....do.....	4.....do.....	1 75	7 00
	H. Brooks.....do.....	25½.....do.....	1 75	44 63
	J. Kaho.....do.....	8.....do.....	1 75	14 00
	Alex. McKenzie.....do.....	9.....do.....	1 75	15 75
	John Gribbin.....do.....	8.....do.....	1 75	14 00
	D. McLeod.....do.....	8.....do.....	1 75	14 00
	Timber.....do.....	321 .. feet....	M. 16 00	5 14
	Boards.....do.....	300.....do.....	M. 16 00	4 80
	White lead.....do.....	75 pounds....	8	6 00
	Stove-pipe.....do.....	61½.....do.....	27	16 60
	Fire-brick.....do.....	5.....do.....	6	30
	Door-bolts.....do.....	2.....do.....	25	50
	Chimney-flues.....do.....	7.....do.....	3 75	26 25
	Stove-pipe.....do.....	26 pounds....	25	6 50
	Tin-roofing.....do.....	4,545½ sq. feet	10	454 57
	Gutter tin.....do.....	347 .. feet....	25	86 75
	Conductor.....do.....	210.....do.....	15	31 50
	Lead outlets.....do.....	10.....do.....	20	2 00
	American sheet-iron.....do.....	41 .. pounds...	7½	3 08
	Cast-iron doors.....do.....	600.....do.....	3	18 00

## STATEMENT—Continued.

Date.	Labor and stock.	Time, &c.	Price.	Am
1846.				
January...	Boards .....	2,300 feet .....	M. \$16 00	\$
	Do .....	1,805 do .....	M. 26 50	
	Do .....	133 feet .....	M. 33 00	
	Nails .....	200 pounds .....	4½	
	Wood-screws .....	1 gross .....	86	
	A. G. Wright .....	7½ days .....	1 35	
	R. Clement .....	2½ do .....	1 30	
	Iron, No. 5 .....	51 pounds .....	8	
	Bar iron .....	3 do .....	8	
	A. F. Strong .....	¾ day .....	1 00	
	F. A. Strong .....	¾ do .....	1 75	
	H. McFarland .....	¾ do .....	1 75	
	E. Badger .....	¾ do .....	1 00	
	H. Brooks .....	24½ days .....	1 75	
	W. Edwards .....	17½ do .....	2 00	
February..	J. D. Lord .....	11 do .....	2 50	
	E. Alden .....	23½ do .....	1 62	
	W. Hitchcock .....	11½ do .....	1 50	
	W. Edwards .....	20 do .....	2 00	
March ....	Nails .....	300 pounds .....	4½	
	Round iron .....	3 do .....	4½	
	Funnel .....	65½ do .....	25	
	A. F. Strong .....	¾ day .....	1 00	
	F. A. Strong .....	¾ do .....	1 75	
	W. Hitchcock .....	20½ days .....	1 50	
April. ....	E. Alden .....	24½ do .....	1 62	
	A. S. Rollins .....	21 do .....	1 50	
	W. Hitchcock .....	24½ do .....	1 50	
	M. J. Sanborn .....	9½ do .....	1 50	
	T. Vinson .....	14 do .....	1 75	
	B. Forbes .....	16 do .....	1 50	
	H. Brooks .....	18½ do .....	1 75	
	A. McKenzie .....	11½ do .....	1 75	
	John Wall .....	1 do .....	1 00	
	F. A. Strong .....	¾ do .....	2 00	
	A. F. Strong .....	¾ do .....	1 00	
	Iron, No. 5 .....	7 pounds .....	8	
	Iron, No. 7 .....	129 do .....	3½	
	Boards .....	100 feet .....	M. 33 00	
	Plank .....	100 do .....	M. 33 00	
	Charcoal .....	50 bushels .....	8	
	Finishing nails .....	4 pounds .....	11	
	Boards .....	3,500 feet .....	M. 16 00	
	Timber .....	600 do .....	M. 15 00	
May .....	Boards .....	3,000 do .....	M. 26 50	
	Do .....	1,000 do .....	M. 16 00	
	Iron castings .....	164 pounds .....	3	
	C. Briggs, services .....	1½ day .....	1 50	
	Nails .....	500 pounds .....	4½	
	Laths .....	15,850 .....	M. 5 50	
	Timber .....	200 feet .....	M. 20 00	
	Chimney-flues .....	3 .....	4 00	
	Glaziers' points .....	5 .....	6½	
	Hair .....	30 bushels .....	25	
	Lime .....	14,745 pounds .....	cwt. 37	
	Varnish .....	½ gallon .....	3 00	
	E. Alden .....	9½ days .....	1 62	
	W. Hitchcock .....	22 do .....	1 50	
	A. Rollins .....	25½ do .....	1 50	

## STATEMENT—Continued.

Sta.	Labor and stock.	Time, &c.	Price.	Amount.
846.	M. J. Sanborn.....services...	25...days....	\$1 50	\$37 50
	E. Morley.....do.....	4....do.....	1 40	70
	T. Vinson.....do.....	7....do.....	1 75	12 25
	B. Forbes.....do.....	9....do.....	1 63	14 58
	J. S. Simmonds.....do.....	25½...do.....	1 50	38 25
	G. Greenleaf.....do.....	18....do.....	1 50	27 00
	H. McFarland.....do.....	¾....do.....	1 75	1 31
	Lucius Smith.....do.....	¾....do.....	1 00	75
	Iron, No. 5.....	15 pounds....	8	1 20
	Charcoal.....	4 bushels....	8	32
846.....	W. Buckland.....services...	¾....day.....	2 50	1 88
	J. O. Luther.....do.....	¾....do.....	1 50	75
	Wm. Hill.....do.....	1½....do.....	1 63	2 43
	E. Alden.....do.....	5....days....	1 63	8 10
	W. Hitchcock.....do.....	26....do.....	1 63	42 12
	A. Rollins.....do.....	22....do.....	1 50	33 00
	M. J. Sanborn.....do.....	8....do.....	1 50	12 00
	Thomas Vinson.....do.....	19....do.....	1 90	36 10
	M. McIntyre.....do.....	1....do.....	1 00	1 00
	B. Forbes.....do.....	17½....do.....	1 63	28 35
	J. J. Simmonds.....do.....	22½....do.....	1 50	33 38
	M. Purtall.....do.....	1....do.....	1 00	1 00
	Wm. Parker.....do.....	10....do.....	1 00	10 00
	John Wall.....do.....	10....do.....	1 00	10 00
	George Greenleaf.....do.....	6....do.....	1 50	9 00
	Charles Collins.....do.....	12....do.....	1 75	21 00
	Walter Edwards.....do.....	3....do.....	2 00	6 00
	Alvin Dunham.....do.....	2....do.....	2 00	4 00
	Edward Colton.....do.....	2....do.....	1 75	3 50
	Charles De Forrest.....do.....	2....do.....	1 75	3 50
	S. Adams.....do.....	1....do.....	1 75	1 75
	Iron, No. 5.....	6....pounds....	8	48
	Round iron.....	90....do.....	4½	4 05
	Screws.....	1 gross.....	56	56
	Laths.....	7,000.....	M. 5 75	40 25
	Boards.....	1,946 feet....	M. 16 00	31 14
	Do.....	166....do.....	M. 35 00	58
	Do.....	1,260....do.....	M. 26 50	33 41
	Timber.....	92....do.....	M. 90 00	1 84
	Ash plank.....	50....do.....	M. 20 00	1 00
	Tin roofing.....	799....do.....	10	79 99
	Brass door-rails.....	16....do.....	37½	6 00
	Sheeves.....	1....do.....	6 00	6 00
	Nails.....	100 pounds....	4 25	4 25
	Glass.....	663 lights....	60.85 cts.	403 44
7.....	A. Rollins.....services...	11½...days....	1 50	16 87
	J. J. Simmonds.....do.....	7....do.....	1 50	10 50
	M. Purtall.....do.....	2....do.....	1 00	2 00
	Elijah Alden.....do.....	3....do.....	1 63	4 86
	Geo. W. Abbott.....do.....	2½....do.....	1 60	4 00
	Alvin Dunham.....do.....	16½....do.....	2 00	33 50
	Edward Colton.....do.....	25....do.....	1 75	43 75
	Charles De Forrest.....do.....	22....do.....	1 75	38 50
	Wm. Hitchcock.....do.....	21½....do.....	1 50	32 25
	M. J. Sanborn.....do.....	13½....do.....	1 50	20 25
	B. Forbes.....do.....	1....do.....	1 63	1 63
	Plaster.....	4 caaks.....	2 75	11 00
	Boards.....	10,200 feet....	M. 26 50	270 30
	Laths.....	450.....do.....	M. 5 75	2 57

## STATEMENT—Continued.

Date.	Labor and stock.	Time, &c.	Price.	A
1846.				
July.....	Cast steel.....	4...pounds...	\$0 15½	
	Iron, No. 5.....	33...do.....	8	
	Iron, No. 6.....	32...do.....	3½	
	W. Buckland.....services	1...day.....	2 50	
	R. Clement.....do.....	½...do.....	1 50	
	J. O. Luther.....do.....	6...days....	1 50	
	Salmon Adams.....do.....	4½...do.....	1 75	
	J. D. Smith.....do.....	4½...do.....	1 00	
August....	A. Rollins.....do.....	15...do.....	1 50	
	Jno. Wall.....do.....	25½...do.....	1 00	
	J. J. Simmonds.....do.....	26...do.....	1 50	
	E. Sears.....do.....	12...do.....	1 75	
	Geo. Greenleaf.....do.....	½...do.....	1 50	
	Alvin Dunham.....do.....	25½...do.....	2 00	
	Edward Colton.....do.....	25½...do.....	1 75	
	Chs. De Forrest.....do.....	25½...do.....	1 75	
	Geo. Kendall.....do.....	26...do.....	1 50	
	Geo. D. Irving.....do.....	20...do.....	1 50	
	Wood screws.....	3...gross....	25	
	Boards.....	296...feet....	M 30 00	
	Plaster.....	15...casks....	2 75	
	F. A. Strong.....services	½...day.....	2 00	
	J. D. Smith.....do.....	½...do.....	1 00	
	A. F. Strong.....do.....	½...do.....	1 00	
	J. O. Luther.....do.....	3...days....	1 50	
September.	W. Hitchcock.....do.....	26...do.....	1 50	
	A. Rollins.....do.....	22½...do.....	1 50	
	J. J. Simmonds.....do.....	25½...do.....	1 50	
	Jno. Wall.....do.....	11...do.....	2 00	
	A. Dunham.....do.....	16...do.....	1 00	
	E. Colton.....do.....	11½...do.....	1 75	
	Chs. De Forrest.....do.....	14...do.....	1 75	
	Geo. Kendall.....do.....	26...do.....	1 50	
	Geo. D. Irving.....do.....	5...do.....	1 50	
	E. Sears.....do.....	11...do.....	1 75	
	Geo. Greenleaf.....do.....	5...do.....	1 50	
	Jas. Smith.....do.....	11...do.....	1 75	
	A. Alden.....do.....	1½...do.....	1 50	
	Vinegar.....	3...gallons....	16	
	Cement.....	1...cask.....	2 00	
	Plaster.....	4...do.....	2 75	
	Marble chimney pieces.....	10.....	36 10	
	Marble hearths.....	10.....		
	Sea sand.....	50...bushels..	20	
	Iron pipe, (wind).....	138½.....		
	Iron, No. 2.....	25...pounds...	5	
	Iron, No. 5.....	15...do.....	8	
	Iron, round.....	25...do.....	4½	
	J. Jepson, (setting hearth stones, &c.)..	10...days....	2 00	
	M. Bliss, services.....	3½...do.....	1 50	
October...	Shingles.....	18,000.....		
	Wood screws.....	1...gross....	37	
	E. Alden.....services	2...days....	1 02	
	Wm. Hitchcock.....do.....	25½...do.....	1 50	
	A. S. Rollins.....do.....	25½...do.....	1 50	
	M. J. Sanborn.....do.....	3½...do.....	1 50	
	J. J. Simmonds.....do.....	23...do.....	1 50	
	J. Wall.....do.....	2...do.....	1 00	
	J. R. Marshall.....do.....	½...do.....	1 50	

## STATEMENT—Continued.

	Labor and stock.	Time, &c.	Price.	Amount.
	Geo. Kendall.....services.....	25½ days.....	\$1 50	\$38 25
	Geo. G. Irving.....do.....	9½ do.....	1 50	14 63
	Wm. S. Marshall.....do.....	14½ do.....	1 50	22 12
	G. S. Greenleaf.....do.....	10½ do.....	1 50	15 75
	J. P. Marshall.....do.....	½ do.....	1 50	75
	Jno. Parrison.....do.....	8½ do.....	1 50	12 75
	F. Clark.....do.....	3½ do.....	1 50	5 25
	P. Chase.....do.....	2½ do.....	1 50	4 13
	D. H. Riggs.....do.....	2½ do.....	1 50	3 75
ber.	Sand-paper.....	2 quires.....	19	38
	Varnish.....	3 quarts.....	67	2 00
	Wood-screws.....	6 gross.....	70	4 20
	Cast butts.....	48 pounds.....	5	2 40
	Boards.....	9,488 feet.....	M 30 00	284 64
	Cherry lumber.....	138 do.....	5½	7 59
	Sash cords.....	1 dozen.....	7 50	7 50
	Glass.....	62 lights.....	10	6 20
	Cast iron weights.....	703 pounds.....	3	21 09
	J. D. Lord.....services.....	1 day.....	3 00	3 00
	E. Alden.....do.....	10½ days.....	1 50	15 75
	Wm. Hitchcock.....do.....	23 do.....	1 50	34 50
	Alonzo Rollins.....do.....	23 do.....	1 50	34 50
	Thomas Vinson.....do.....	1 do.....	1 90	1 90
	J. J. Simmonds.....do.....	24½ do.....	1 50	36 38
	George Kendall.....do.....	24½ do.....	1 50	36 38
	George G. Irving.....do.....	7 do.....	1 50	10 50
	W. S. Marsh.....do.....	23½ do.....	1 50	35 25
	Thomas Whiddleton.....do.....	3 do.....	1 50	4 50
	Jason Washburn.....do.....	6 do.....	1 50	9 00
	George Greenleaf.....do.....	11 do.....	1 50	16 50
	A. Alden.....do.....	4 do.....	1 50	6 00
	John Parrison.....do.....	6½ do.....	1 50	9 75
	W. Edwards.....do.....	23 do.....	2 00	46 00
	M. Bliss.....do.....	8 do.....	1 50	12 00
	Rufus Fuller.....do.....	3½ do.....	1 50	5 25
ber.	F. Clark.....do.....	3 do.....	1 50	4 50
	Iron castings.....	579 pounds.....	3	17 37
	R. Morley.....services.....	1½ day.....	1 50	2 62
	Copper kettle.....	74 pounds.....	45	33 30
	Brass cock.....	1.....	2 50	2 50
	Linseed oil.....	121 gallons.....	65	78 65
	White lead.....	665 pounds.....	6½	43 23
	Stone yellow.....	9 do.....	6½	58
	Spanish brown.....	15 do.....	6½	97
	Sand-paper.....	1 quire.....	19	19
	Nails.....	100 pounds.....	4½	4 25
	Fire bricks.....	45.....	6½	2 92
	Window weights.....	519 pounds.....	3	15 57
	Stove-pipe.....	10 do.....	25	2 50
	Butts.....	458 do.....	5	22 90
	Screws.....	18 gross.....	70	12 60
•	Jacob W. Everett.....services.....	1 day.....	1 00	1 00
	C. C. Strong.....do.....	1½ do.....	1 75	2 19
	J. D. Lord.....do.....	4 days.....	3 00	12 00
	E. Alden.....do.....	27 do.....	1 62	43 74
	Wm. Hitchcock.....do.....	26½ do.....	1 50	39 37
	Alonzo Rollins.....do.....	28 do.....	1 50	39 00
	Thomas Vinson.....do.....	21 do.....	1 90	39 90
	M. McIntyre.....do.....	9 do.....	1 00	9 00

## STATEMENT—Continued.

Date.	Labor and stock.	Time, &c.	Price.	Am
1846. December.	B. Forbes..... services.....	9.... days.....	\$1 62	
	J. J. Simmonds..... do.....	27.... do.....	1 50	
	George Kendall..... do.....	26½.... do.....	1 50	
	George G. Irving..... do.....	27.... do.....	1 50	
	Martin Taylor..... do.....	7.... do.....	1 50	
	James Atchinson..... do.....	27.... do.....	1 50	
	W. S. Marsh..... do.....	26.... do.....	1 50	
	Benjamin Waterman..... do.....	26.... do.....	1 50	
	Thos. Whiddleton..... do.....	4.... do.....	1 50	
	J. Washburn..... do.....	25.... do.....	1 50	
	Geo. Greenleaf..... do.....	10.... do.....	1 50	
	Albert Alden..... do.....	7¾.... do.....	1 50	
	J. Parrison..... do.....	8¼.... do.....	1 50	
	W. Edwards..... do.....	26½.... do.....	2 00	
	M. Bliss..... do.....	3¼.... do.....	1 50	
1847. January...	F. Clark..... do.....	2.... do.....	1 50	
	Iron, No. 5.....	33.... pounds.....	8	
	Iron, round.....	22.... do.....	4½	
	Boards.....	1,000 feet.....	M. 16 00	
	Door-bolts.....	2....	58½	
	J. W. Everett..... services.....	¼.... day.....	1 00	
	C. C. Strong..... do.....	¼.... do.....	1 75	
	F. A. Strong..... do.....	1.... do.....	2 00	
	J. D. Smith..... do.....	¼.... do.....	1 00	
	J. D. Lord..... do.....	9¼.... days.....	3 00	
	E. Alden..... do.....	26.... do.....	1 62	
	Wm. Hitchcock..... do.....	26.... do.....	1 50	
	A. S. Rollins..... do.....	26.... do.....	1 50	
	J. J. Simmonds..... do.....	25¼.... do.....	1 50	
	Geo. Kendall..... do.....	26.... do.....	1 50	
	Jas. Atchison..... do.....	26.... do.....	1 50	
	Geo. G. Irving..... do.....	26.... do.....	1 50	
	W. S. Marsh..... do.....	25½.... do.....	1 50	
	Benj. H. Waterman..... do.....	1.... do.....	1 50	
	W. Edwards..... do.....	26.... do.....	2 00	
	Thos. Vinson..... do.....	25½.... do.....	1 90	
	B. M. Forbes..... do.....	5.... do.....	1 62	
	Mich. McFutyr..... do.....	6.... do.....	1 00	
	Geo. Greenleaf..... do.....	22¾.... do.....	1 50	
	A. Alden..... do.....	22¼.... do.....	1 50	
	J. Parrison..... do.....	2.... do.....	1 50	
	F. Clark..... do.....	23¼.... do.....	1 50	
	E. Gaylord..... do.....	2.... do.....	2 00	
	Sheat-lead.....	240 pounds.....	5½	
	S. O. Mason..... services.....	26.... days.....	2 00	
	Jas. Stewart..... do.....	26.... do.....	2 00	
	R. West..... do.....	26.... do.....	2 00	
	Lock.....	1....	1 33	
	Boards.....	4,600 feet.....	M. 30 00	
	Sand-paper.....	1 quire.....	19	
	Nails.....	200 pounds.....	44	
	Clout-nails.....	1.... do.....	14	
	Locks, assorted.....	65....	2 63.4	
	J. O. Luther..... services.....	5¼.... days.....	1 50	
	R. Morley..... do.....	2¼.... do.....	1 50	
	Iron castings.....	32 pounds.....	3	
	Door-knobs.....	62....	96.3	
	Shutter-knobs.....	72....	25	
	Shutter-hooks.....	48....	13.2	



## STATEMENT—Continued.

No.	Labor and stock.	Time, &c.	Price.	Amount.
7.	Escutcheons .....	24 .....	\$0 25	\$6 00
ry...	Sash-fasteners .....	48 .....	75	36 00
	Chrome yellow .....	1 pound.....	33	33
	Glass .....	39 lights.....	10	3 90
	Soap-stone.....	2 pieces.....	5 02	11 24
	Mahogany plank .....	91 feet.....	163	15 17
	Copper tacks.....	1 paper.....	32	32
	Marble shelf.....	1.....	3 50	3 50
	Cast butts .....	100 pounds...	10	10 00
ary..	Screws.....	13 gross.....	57	7 41
	Sash rollers.....	6.....	34	20
	Oak plank.....	28 of et.....	10	2 80
	Locks.....	21.....	1 224	25 67
	Sand-paper.....	2 quires.....	19	38
	Door knobs.....	8 dozen.....	304	2 44
	Ash-mouth.....	1.....	67	67
	Brass buttons.....	3 dozen.....	1 00	3 00
	Glass.....	30 lights.....	10	3 00
	Bolts.....	2.....	30	60
	Bookcase locks.....	2.....	334	664
	Blind staples.....	4 pounds.....	334	1 33
	Door knob.....	1.....	2	2
	Mineral door-latch.....	1.....	83	83
	Cast butts .....	68 pounds...	5	3 40
	Wood screws.....	5 gross.....	57	2 85
	A. Colton..... services	2 days.....	1 50	3 00
	R. Morley..... do	4 do.....	1 50	1 13
	J. W. Everett..... do	4 do.....	1 00	50
	H. McFarland..... do	4 do.....	1 75	44
	C. C. Strong..... do	4 do.....	1 75	44
	L. Smith..... do	4 do.....	1 00	25
	J. D. Lord..... do	9 do.....	3 00	27 00
	E. Alden..... do	9 do.....	1 02	14 58
	Wm. Hitchcock..... do	224 do.....	1 50	33 75
	A. Rollins..... do	234 do.....	1 50	35 25
	J. J. Simmonds..... do	24 do.....	1 50	36 00
	Geo. Kendall..... do	24 do.....	1 50	36 00
	Geo. G. Irving..... do	14 do.....	1 50	21 00
	Jas. Atchinson..... do	24 do.....	1 50	36 00
	W. S. Marsh..... do	174 do.....	1 50	26 25
	W. Edwards..... do	12 do.....	2 00	24 00
	Thos. Vinson..... do	4 do.....	1 90	7 60
	Geo. S. Greenleaf..... do	21 do.....	1 50	31 50
	A. Alden..... do	24 do.....	1 50	36 00
	F. Clark..... do	104 do.....	1 50	16 12
	E. Gaylord..... do	11 do.....	2 00	22 00
	James Stewart..... do	24 do.....	2 00	48 00
	Richard West..... do	24 do.....	2 00	48 00
	S. O. Mason..... do	124 do.....	2 00	24 50
b....	Boards.....	2,500 feet.....	M 30 00	75 00
	Knobs.....	3 dozen.....	1 25	3 75
	Varnish.....	3 gallons.....	2 724	8 17
	Brass butts .....	8.....	124	1 00
	Screws.....	6 gross.....	35	2 10
	Solder.....	650 pounds...	20	130 00
	Lead pipe.....	1,000 feet.....	3 50	350 00
	Brass cocks.....	13.....	2 50	32 50
	Soap-stone sinks.....	5.....	14 00	70 00
	Pressed bricks.....	2,000.....	12 50	25 00

## STATEMENT—Continued.

Date.	Labor and stock.	Time, &c.	Price.	As
1847.				
March.....	Iron, No. 1.....	18..pounds..	\$0 06½	
	Iron, No. 5.....	20..pounds..	8	
	J. W. Everett..... services.....	1½..days....	1 00	
	H. McFarland..... do.....	½....do.....	1 75	
	P. Kerrick..... do.....	½....do.....	1 00	
	C. C. Strong..... do.....	1½....do.....	1 75	
	F. A. Strong..... do.....	½....do.....	2 00	
	L. Smith..... do.....	½....do.....	1 00	
	J. D. Lord..... do.....	3....do.....	3 00	
	A. Rollins..... do.....	27....do.....	1 50	
	M. J. Sanborn..... do.....	1....do.....	1 50	
	J. J. Simmonds..... do.....	26½....do.....	1 50	
	George Kendall..... do.....	27....do.....	1 50	
	W. S. Marsh..... do.....	26½....do.....	1 50	
	George S. Greenleaf..... do.....	18....do.....	1 50	
	Albert Alden..... do.....	27....do.....	1 50	
	F. Clark..... do.....	25½....do.....	1 50	
	E. Gaylord..... do.....	21½....do.....	2 00	
	D. Prince, jr..... do.....	1....do.....	1 50	
	R. West..... do.....	27....do.....	2 00	
	J. Stewart..... do.....	27....do.....	2 00	
	Spencer..... do.....	1....do.....	2 00	
	J. Atchinson..... do.....	19....do.....	1 50	
	Henry Chany..... do.....	18....do.....	1 50	
	H. M. Cole..... do.....	2....do.....	1 50	
April .....	John Clark..... do.....	27....do.....	2 50	
	Mineral knob.....	1.....	54	
	Cottage locks.....	2.....	1 33½	
	Latch.....	1.....	92	
	Stove-pipe.....	135½ pounds.....	-----	
	Brads.....	17..papers.....	64	
	Boards.....	1,200 feet.....	M. 30 00	
	Drawer and shutter knobs.....	30.....	10	
	Shutter hooks.....	12.....	13½	
	White lead.....	788 pounds.....	64	
	Whiting.....	40....do.....	1	
	Turpentine.....	24½ gallons.....	43	
	Linseed oil.....	20½....do.....	65	
	Chrome yellow.....	43½ pounds.....	64	
	Varnish.....	3...gallons.....	2 50	
	Screws.....	2...gross.....	48	
	Closet hooks.....	144.....	-----	
	Door bolts.....	1.....	10	
	Mahogany knobs.....	9.....	3	
	Mahogany boards.....	644..feet.....	17	
	Cedar boards.....	710..do.....	8	
	Do.....	295....do.....	7	
	Stove, (air-tight).....	1.....	6 50	
	Iron, No. 4.....	16 pounds.....	8	
	Iron, No. 5.....	450....do.....	8	
	J. W. Everett..... services.....	2....days.....	1 00	
	C. C. Strong..... do.....	2....do.....	1 75	
	F. A. Strong..... do.....	½....do.....	2 00	
	P. Kerrick..... do.....	½....do.....	1 00	
	L. Scott..... do.....	15....do.....	1 75	
	W. Hitchcock..... do.....	10....do.....	1 50	
	A. Rollins..... do.....	5....do.....	1 50	
	J. J. Simmonds..... do.....	12½....do.....	1 50	
	George Kendall..... do.....	18....do.....	1 50	

## STATEMENT—Continued.

ite.	Labor and stock.	Time, &c.	Price.	Amount.
47.	Wm. S. Marsh.....services...	16½ days....	\$1 50	\$24 75
.....	J. Atchinson.....do.....	5½ do.....	1 50	8 25
	George S. Greenleaf.....do.....	13 do.....	1 50	19 50
	A. Alden.....do.....	13 do.....	1 50	19 50
	F. Clark.....do.....	1½ do.....	1 50	2 25
	E. Gaylord.....do.....	8 do.....	2 00	16 00
	H. Cheny.....do.....	12 do.....	1 50	18 00
	H. Cole.....do.....	12 do.....	1 50	18 00
	H. Skinner.....do.....	4 do.....	1 50	6 00
	C. Buckland.....do.....	2½ do.....	3 50	9 62
	W. Buckland.....do.....	1 do.....	2 50	2 50
	A. Colton.....do.....	10½ do.....	1 50	16 13
	S. Olmstead.....do.....	1½ do.....	1 60	2 40
	Iron castings, (in March).....	215 pounds....	3	6 45
	Do.....	57 do.....	3	1 71
	American sheet iron.....	42 do.....	6	2 52
	J. Shaw, services.....	14½ days....	1 00	14 75
.....	Window pulleys.....	16.....	17½	2 84
	Iron, No. 5.....	182.....	8	14 56
	J. Shaw.....services.....	7 do.....	1 00	7 00
	L. Scott.....do.....	7½ do.....	1 75	13 12
	W. Buckland.....do.....	1½ do.....	2 50	3 75
	A. Colton.....do.....	22½ do.....	1 50	33 38
	Sheet iron.....	55 pounds....	6	3 30
.....	W. Buckland.....services.....	2½ do.....	2 50	6 25
	A. Colton.....do.....	15½ do.....	1 50	22 87
	L. Jenks.....do.....	1 do.....	1 50	1 50
	H. Oliver.....do.....	4½ do.....	1 75	7 87
	Screws.....	24 gross.....	41	9 84
	Jack chain.....	3 yards.....	33½	1 00
	Cast butts.....	2.....	9	18
	Mahogany plank.....	40 feet.....	17	6 80
	Brass buttons.....	14.....	8½	1 16
	Sash fasteners.....	1 dozen.....	9 00	9 00
	Lightning conductors.....	624 feet.....	23	143 52
	Copper tacks.....	1 pound.....	40	40
	Slate.....	10,823 feet.....	8 and 8½	382 54
	Tin.....	27 sheets.....	13½	3 63
	Iron, No. 5.....	142 pounds....	8	11 36
	Brass cocks.....	36.....	2 00	72 00
	Chimney caps.....	6.....	1 25	7 50
	Fire grates.....	6.....	28 87½	173 25
	Fixtures, water-closet.....	3.....	17 00	51 00
	Tin gutter.....	51 feet.....	20	10 20
	J. W. Everett.....services.....	½ day.....	1 00	50
	H. McFarland.....do.....	¾ do.....	1 75	1 31
	C. C. Strong.....do.....	¼ do.....	1 75	87
	L. Smith.....do.....	¾ do.....	1 00	75
	L. C. Scott.....do.....	1¾ do.....	1 75	3 06
	J. Shaw.....do.....	2 do.....	1 00	2 00
	Albert Alden.....do.....	8 do.....	1 50	12 00
	George Greenleaf.....do.....	11 do.....	1 50	16 50
	T. B. Hawks.....do.....	9 do.....	1 50	13 50
	J. W. Marshall.....do.....	1½ do.....	1 50	1 87
	S. W. Davis.....do.....	1½ do.....	1 50	2 25
.....	Sundry expenses, including labor and materials.....			300 61
	Cost of quarters when finished.....			21,534 56

## STATEMENT—Continued

Date.	Labor and stock.	Time, &c.	Price.	Amou
1848.....	Cost of removal of old quarters from site now occupied by the new arsenal. Interior fences connected with quarters, consisting of about 22½ rods of common wooden fence, estimated to have cost.....	.....	.....	\$7 12
1849.....	Conveying water to commandant's quarters.....	.....	.....	20
1851.....	Gas introduced into the quarters in 1851 at a cost, including pipe, fixtures, and labor, of.....	.....	.....	96
1853.....	Painting quarters outside and inside.....	.....	.....	1, 56
	Total cost to present time.....	.....	.....	23, 77

## NOTES.

1. The serviceable materials saved from old quarters were mostly used in building "at shop."

2. As to the "cost of additional land, if any, purchased to enlarge grounds connected" the commandant's quarters, no land has been purchased specially for this object. The quarters were built within the original purchase of land made in 1801. Several lots in vicinity have been since purchased, principally with a view to the security of the large arsenal for the storage of finished arms. Of all the purchases of land which have been the only ones that can possibly be supposed to have any relation to the commanding officer's quarters are three parcels, which cost, in the aggregate, \$3,115.

3. As to "improving and embellishing the grounds." The improvements of grounds connected with quarters have been of the same general character with those of other parts of armory grounds in their vicinity, and have been made simultaneously with them from year to year, and charged in the same general account for "repairs and improvements." To rate them at this time would be impracticable.

4. Water is conveyed from the steam-shop to these quarters by the same pipes that serve the stables and the principal reservoir in the square. It was designed to introduce water through the same pipes, into the quarters of the master-armorer and clerks, whenever a direct supply should be obtained. The cost of all the pipe in the cistern, and laying the same was—

1845.—Iron pipe, 14,490½ lbs., at 3½ cents.....	\$54
Labor .....	8
1849.—Lead pipe to replace the above, become unserviceable from rust, 2,662½ lbs., at 6 cents.....	15
Labor .....	5

83

One-fourth of which is estimated to be justly chargeable to commanding officer's quarters.

5. In the estimate of funds required for 1852 was an item for painting public buildings. Accordingly, in 1852-'53 most of the buildings on the hill were painted, the commanding officer's quarters among them. The cost of painting exterior and interior of the latter \$1,566 19.

[Minority report.]

NATIONAL ARMORIES—SUPERINTENDENCY OF.

JUNE 21, 1854.—Committed to a Committee of the Whole on the state of the Union, and ordered to be printed.

Mr. KEITT, from the minority of the Special Committee raised to consider a change in the superintendency of the national armories, made the following

REPORT.

*The undersigned, members of the Select Committee of the House of Representatives appointed February 13, 1854, present the following report upon that portion of the inquiry referred to the committee which relates to the national armories.*

The specific inquiry which the committee are directed to make and to report upon is, whether the appointment of military officers to superintend the manufacture of fire-arms at the national armories is compatible with the public interest, and consistent with the nature and character of our civil government. The course pursued by the committee in conducting this inquiry, is to be found stated in full in Miscellaneous Document No. 76, printed by order of the House, and to that the undersigned refer for more minute details, both of the committee's proceedings and of the character and amount of information they had obtained when a majority vote closed the inquiry, than can be properly embodied in this report. The undersigned must here remark that, by this vote, they were precluded from presenting what they regarded important testimony, calculated to lead to a more correct understanding of the subject under investigation; and the printed record will bear them out in the assertion, that up to the time of thus closing, much the greater portion of the testimony had been derived from witnesses known to entertain views hostile to the superintendency of the national armories by military officers, and called at the instance of those equally well known to entertain the same views. Although the printed record, therefore, does not exhibit all the information that it was in the power of the committee to obtain, and that a portion of the committee desired and endeavored to bring before it, and is, in so far, partial and one-sided; still the undersigned are led to form, even from this partial investigation, an opinion favorable to the existing mode of superintending the national armories, and adverse to the resolution which the majority are directed to recommend for adoption by Congress. In reporting their views of the subject of inquiry, and the facts and legitimate deductions therefrom, which have brought them to form and adopt this opinion, the undersigned, although using the testimony and documentary evidence taken before the committee, and able to sustain their opin-

ion from that alone, do not feel bound to confine themselves to it, but at liberty to avail themselves of all reliable information from any other sources.

The two national armories were first established by the act of April 2, 1794, which authorized the employment, at each of them, of *one* superintendent, one master-armorer, and of such number of workmen as the Secretary of War might deem necessary, not to exceed one hundred. This restriction, as to the number of workmen, was repealed by the act of April 23, 1808. The national armories have always, from their first establishment, been placed, by law, under the direction and control of the War Department. When the act of February 8, 1815, reorganizing the Ordnance department, was passed, the public armories were placed under the direction of that particular branch of the War Department. The 9th section of that act prescribes, "that to insure system and uniformity in the different public armories, they are hereby placed under the direction of the Ordnance department." It was by that authority, and for the purpose of insuring system and uniformity in the management and products of the armories, that the Secretary of War deemed it necessary, in 1841, to employ ordnance officers to superintend their operations. The reasons which induced him to make the change were given in his report to the President, which was laid before Congress at its next session. They are to be found in Senate document No. 1, 27th Congress, first session, pages 38, 52 and 53; as also in his testimony before the Select Committee, at pages 77, 78 and 79 of the printed document. The influences of partizan favoritism which were operating at these national works, the want of system in their management, the disregard of, or inattention to, the regulations and instructions of the Ordnance department by the civil superintendents, and the impossibility of the head of that military department exercising a sufficient control over civilians—these considerations rendered it advisable in the opinion of the Secretary of War, with the approval of the President, to try the experiment of a change of superintendency. The question of the legality as well as the expediency of this measure, was soon brought to the notice of Congress, by memorials from Harper's Ferry and its neighborhood. These memorials were referred to the Committee on Military Affairs of the House of Representatives, which committee, after due investigation, and full and mature consideration, presented in April, 1842, through Mr. Goggin, of Virginia, the following report, viz:

"That, before these memorials were presented to Congress, the committee had very fully and maturely considered the subject referred to, the same having been presented to their notice by the message and documents sent to Congress at the present, the last, and extra sessions; that before coming to any conclusion, the committee heard arguments against the appointment of military superintendents of the armories of the United States, both at Harper's Ferry and at Springfield, which are the only armories of their class in the Union. The committee listened with patience to the statements of the late superintendent (Mr. Robb) at Springfield, as well as others. After hearing these, and reading with the greatest care the reports of the boards of officers who have examined the subject, together with the law which was before the com-

nittee, and which places these armories under the control of the ordnance corps, they came to the conclusion that the views as expressed by the ordnance corps were in the main correct; that there were sufficient reasons for the change which had been made in the early part of the year 1841 by the War Department, or, at least, that the reasons were sufficient, in their opinion, to sanction the passage of a bill for a permanent change in the system of management at these armories. The committee decided in favor of a change, and accordingly reported a bill for the purpose, which is hereby made a part of this report. This bill was reported, receiving the sanction of the committee, some time before the presentation of the memorials aforesaid; but desirous, as the committee have been, to have all the facts before them that could be presented by the memorials, they examined them again, but could see no reason set forth therein which were not urged with force and ability by the advocates of the views of the memorialists when before the committee. The committee therefore recommend that the prayer of the memorialists ought not to be granted."

The expediency of the measure, and its necessity for the protection and advancement of the public interest, were also tested by an examination into the condition and management of Springfield armory, made by a board of three civilians in September, 1841. This board was composed of Professor Charles Davies, so distinguished as a mathematician and man of science—of John Chase, one of the most intelligent and most experienced manufacturers of New England; a man who has examined and studied the principal manufacturing establishments of England; who has planned and put in successful operation and superintended many of the best factories in this country, and who is now consulted and employed by most individuals and companies intending to engage in manufacturing operations—and of Daniel Tyler, a gentleman of much experience in the use of arms, and of good judgment as to their quality from his former service in the army, and from his observations in the military schools and arsenals of Europe, for the examination and observation of which he had been previously selected and sent to Europe by the War Department. The testimony and other evidence on the subject of their inquiry were recorded by Mr. J. D. McPherson, well known as one of the most intelligent and accurate clerks and accountants in the service of the government. It would be difficult, if not impossible, to select a board combining more of the essential elements for an intelligent examination and a reliable judgment on the question before them. Their proceedings and report were submitted to Congress and ordered to be printed, and are to be found in full in document No. 207, House of Representatives, 27th Congress, 2d session. Referring to the entire document, (which, but for its length, would be here inserted,) for more minute and complete information, the undersigned will here present certain facts ascertained by this board from their examination and inquiries into the management of the armory under the civil superintendency. Among the facts elicited by their examination are the following:

"That men have been absent from their shops several days in a month, and yet have been able to earn from \$50 to \$60; and it was the opinion of the inspectors that, at some branches, from \$70 to \$100.

per month might be earned by a mechanic working ten hours a day. For example:—One man worked fourteen days and turned in \$41 worth of work; two others, who were absent two weeks, or certainly ten working days, turned in work, respectively, to the amount of \$44 and \$49. It also appears that one man, who was absent an entire month, turned in work to the amount of \$30, which was work, doubtless, executed by another individual, who himself received full wages. There appears to be no reason to doubt that a workman, on some of the branches, may be absent one-fourth of his time, and yet make up a full month's work, without laboring longer than ten hours a day; that an opinion prevails among the workmen that their monthly earnings ought not to appear too large on the pay-roll, and to avoid such a result, work is transferred from one to another, or kept back at the end of the month; and this has been done with the knowledge of the inspectors, though in direct violation of the regulations of the armory. These facts show a general looseness in the management of the armory, which could not exist in a private, and ought not to be permitted in a public establishment."

The testimony of the witnesses examined before that board, and annexed to their report, shows such facts as the following, during the civil superintendency of the armory, and before the reformation introduced by the present superintendent: that the armorers worked, on an average, "between six and seven" hours a day; that they stood, with regard to skill as mechanics, "below mediocrity;" that "far better" workmen could be obtained for the wages paid; that the tariff of prices was "too high, and operated unequally;" that men employed on some branches might be "absent a week or more, and yet make full wages," and there was "an understanding among them not to get too much on the pay-roll for fear of having the prices lowered;" that the prices were "proposed by the workmen," and that the operatives exercised an influence "in fixing prices, and generally over the officers of the armory;" that work done in one month was sometimes withheld and not credited till the next; and that the surplus work of one man was sometimes turned over to make up the deficiency of another; and that the regulations were not enforced.

The board, after ascertaining and reporting on the state of things at the armory, made several suggestions for placing the establishment on a permanent basis, and making improvements conducive to the public interest. First in order among these suggestions is the following, viz:

"They deem it of primary importance to have the armory under the direction of the Ordnance department. Such an arrangement will insure a permanent and capable superintendent, over whom the department can exercise a military control, and who will be responsible, in the penalty of his commission and his reputation as an officer, for the faithful observance of all the regulations established by the department. It will also place the establishment beyond the control of local and political influences, give permanence and uniformity to all its operations, and insure a just and impartial administration. It is of the first importance that the superintendent should be a man of science, well acquainted with the best models of the musket, versed in the construction and operation of machinery, educated in habits of punctuality and



order, and accustomed to control and direct the labor of others. These qualities, the board suppose, are more likely to be found in an ordnance officer, who has attained sufficient rank in his corps to be intrusted with such important duties, than among the various applicants from civil life. Should the department decide that existing laws require the appointment of a superintendent not of the army, the board would suggest whether the interest of the government would not be best served by requiring him to perform all his duties under the direction of an officer of the ordnance corps. Had this corps been in existence at the time of the establishment of the armories, there seems no reason to doubt that their entire direction would have been confided to it, as they were transferred to it on its creation. This would have given their management to a military superintendent, and obviated the anomaly which has existed, of a military establishment under the direction of a military department, and yet subject to the superintendence of a civil head."

In August, 1842, the office of civil superintendent was abolished, and the duties transferred to ordnance officers, by "An act respecting the organization of the army, and for other purposes," approved the 23d of that month. The passage of that act shows the sense of the legislature and the Executive on that subject, at a time when all the circumstances attending the management of the armories by civilians were of recent date and fresh in memory. It has been attributed by the opponents of the present superintendence to the influence of the 'Ordnance board;' but, independently of the manifest inadequacy of such influence to have produced it, it is evident that there was ample cause in the facts elicited by the examination and inquiry of intelligent and competent men.

In executing the duties transferred to them by the act of 23d August, 1842, the ordnance officers who were assigned to the armories had necessarily, for the protection and promotion of the public interest, to break up many abuses and correct many irregularities. This, naturally enough, formed against them a party composed of those who had profited by these abuses and irregularities, and of such as they were able, by any means, to enlist in their cause. After trying, in vain, to attack successfully the system of management of the armories, they brought charges against the superintendent of one of them individually, and had him arraigned before a military court of inquiry. The investigations by this court, although mainly applied to the specific charges against the officer, included, incidentally and to a great extent, the relative advantages of the superintendence of the national armories by civilians and by ordnance officers. The record of its proceedings, with all the testimony and documentary evidence taken before it, is contained in Senate document No. 344, 29th Congress, 1st session, which is referred to (particularly pages 150 to 152, and 199 to 205) for important and reliable information on the question. It would extend this report unreasonably to go into a minute analysis of the testimony taken on that occasion. The undersigned, therefore, will merely state the result of the investigation, as announced from the War Department, as follows:

"1. The court of inquiry, whereof Brigadier General John E. Wool is president, instituted by general orders No. 3, of February 4, 1846,

by direction of the President, 'to examine into certain transactions, accusations, and complaints, made against Major James W. Ripley, of the Ordnance department, by Joseph Lombard, Calvin Shattuck, and other citizens of Springfield, Massachusetts,' have submitted a full report of the *facts*, and their *opinion* on the merits of the case. The *opinion* concludes as follows :

"An attentive and patient investigation of the charges presented by the memorialists, with the most untiring zeal, enables the court to pronounce, and it does pronounce, an opinion that Major *James W. Ripley*, superintendent of this armory, is acquitted fully and honorably of all the charges exhibited against him.

"2. The whole of the proceedings of the court of inquiry in the foregoing case having been duly laid before the President of the United States, the following is his decision thereon :

"WASHINGTON, April 9, 1846.

"I have examined the proceedings of the court of inquiry in the case of Major *James W. Ripley*, of the Ordnance department, and approve the 'findings and opinion' of the court, and they are hereby approved and confirmed.

JAMES K. POLK."

In giving their opinion, the court speak of the general management of the armory by the military superintendent as follows :

"Finally, in the opinion of the court, the accused, in his administration of the affairs of the armory, has been actuated by honest purpose and an enlightened zeal for the public interest ; and, by his administrative capacity, he has enforced order and insured economy ; and that in achieving such purposes, he has not in any degree oppressed any person or persons. By an examination of the establishment made by the court, there appears to be a due observance of order, regularity, efficiency, and economy, in all its various departments and branches."

Besides these investigations there were others, made by almost every Secretary of War who has been in office since the change in the mode of superintendence by the act of 23d August, 1842. They have all been attended with the uniform result of convincing each Secretary that the mode of superintendence, as established by that law, was good, and requisite for the public interest, and each has been always opposed to a change.

During the second session of the thirty-second Congress, when the army appropriation bill was under consideration, an amendment to it was offered, repealing so much of the act of 23d August, 1842, as abolished the civil superintendence of the national armories, and establishing that mode of superintendence. That amendment was not adopted by Congress ; but in lieu of it there was a provision, that from and after the 1st of July, 1853, "the act of Congress approved August 23, 1842, be so modified that the President may, if in his opinion the public interest demands it, place over any of the armories a superintendent who does not belong to the army ; and in order to enable him to decide to his satisfaction, he is hereby authorized to cause the necessary and proper inquiries to be instituted, through the medium of a commission of civilians and military men, with a view of ascertaining

which of the two systems is the more economical, efficient, and safe, for the management of the public armories—that formerly existing under the superintendence of civil officers, or that now existing under the superintendence of officers of the Ordnance department.” In accordance with this provision, the President appointed a commission, consisting of four civilians and two military men. This commission, after a long session at Springfield armory and in this city, submitted their reports, with the journal of their proceedings, and a record of the testimony taken before them, to the President, early in December last. The President had not exercised the discretionary authority granted to him by the act of 3d March, 1853, to make a change in the mode of superintending the public armories, if, in his opinion, the public interest demanded it, after having had the records and reports of this commission before him for several months; nor had he determined to make any change. But when the select committee was appointed by the House of Representatives to inquire and report to it in relation to the subject, he turned over to them the reports and testimony which the commission had submitted. The testimony is characterized by the members of the commission, in their reports on both sides of the question, as “a voluminous mass,” much of it “wholly irrelevant”—“incomplete”—“voluminous, and much of it of a personal character”—“a vast mass of heterogeneous matter, embodying various views and opinions of interested individuals as to the affairs of the armory, with narratives of individual grievances and complaints”—“a mass of irrelevant matter, serving only to mystify and darken the true question”—“a record of testimony swollen, as it is, with idle conjectures, suspicions, and local jealousies of every kind, social, political, and religious— a confused mass, supplying no materials for any connected argument whatever.” And a perusal of the record will show that the members of the commission, in thus describing the testimony taken before it, have not done it injustice. Most of it is irrelevant; and that which is to the point is so contradictory between the witnesses on the different sides as to prove both systems of superintendency good, both bad, and either or neither more conducive to the public interest. Accordingly, it is found that in the reports of the commissioners, little or no reliance is placed on the testimony—no analysis of it as a whole, or weighing one part of it with another, is attempted, and it is only noticed by way of general reference, or to be characterized as before stated. The reports present generally the opinions and views of the individuals by whom they are drawn up, and so far are entitled to as much weight as may be due to a correct estimate of the peculiar competency of each, from professional education and pursuits, and the natural bias of his mind, to form a correct judgment on such a question. So far, however, as facts are adduced in support of these views, it may be well to notice and examine them. In looking over these reports in the order in which they appear in the printed document, the first fact stated appears in the report of Andrew Stevenson, the president of the board, by a reference to an official report made in February, 1842, by Colonel Craig, the present head of the Ordnance department, and Col. Churchill, the Inspector General of the army; an extract from which report is given, as follows: “With regard to the best mode of govern-

ment for the armories, the board cannot form a decision, being aware that the walks of civil life afford the widest range to make a suitable selection." This is taken as evidence on the part of two high military officers in favor of civil superintendence, and is claimed as "an authority which justly challenges the highest respect." The weight due to such authority is acknowledged; but if it be entitled to the highest respect when given at a time when the military superintendence had scarcely commenced, and its effects were not known and could not be appreciated, to how much more weight and respect is the same authority entitled after actual experience had enabled "the same high military officers, whose authority justly challenges the highest respect," to form a decision with regard to the best mode of government for the armories. From their report in 1842, let us turn to their reports of recent dates. The following are extracts from General Churchill's report of November 7, 1853:

"The following remarks, not inappropriate at any inspection, are made in reference partly to statements in newspapers, pamphlets, and debates in Congress, a few years past, going to show the expediency of a change in the superintendents of the armories from *officers* of the Ordnance department—a system commenced in 1840 [1841]—to *citizens*. I will allude first to a speech made in Congress last winter, in which an extract was given from the report of a board of officers in February or March, 1842, for fixing the prices of work, &c., of Harper's Ferry armory. The extract or quotation given went to convey the impression that the members of that board were unanimous in favor of a citizen superintendent; whereas the report itself contained in the same paragraph the opinion of part of the members that an officer of the ordnance would be preferable, and the reasons for this difference were stated on both sides. It is known now that the gentlemen who composed that board think alike on that subject, and are, having more experience, decidedly in favor of an officer of ordnance as superintendent.

"It has been stated even in Congress, and nowhere fully denied, that an officer of the army, employed as superintendent at an armory, may, and probably does, put the men employed under *martial law* and *military discipline*. No law or regulation of the army, or of the Ordnance department, requires or authorizes this, or subjects the men employed there by hire, from highest to lowest, to any martial rule, military subordination, or trial and punishment by court-martial, as 'followers of the army;' and no officer can or dare establish any regulation, or impose any punishment, that a citizen superintendent could not do at the same place or in any private establishment. But the *officer* himself, at an armory, as at all other places, is subject to the rules and articles of war, and may be punished by sentence of court-martial for offences or faults, when a citizen could not be reached by the law martial. The *officer* may, if he please, wear his military dress, with sword, in his office or the workshops; harmless would they be. He may require some of the men, in fulfilment of paid service, to raise the flag of America, and fire the national salute; a citizen could require the performance of the same duties.

"I was informed, on making inquiry, by the same seven men whose

names I have mentioned above, and the ordnance storekeeper, (a gentleman whose veracity and character are of the highest stamp,) that, to their knowledge and belief, Colonel Ripley, the only officer who has had charge of the armory, has never in any manner inflicted, or proposed to inflict, any punishment upon, or required any military performances, or exacted anything humiliating, in labor or manners, from, any of the persons now or at any time employed at the place; and that they have never known, in a single instance, a complaint to have been made against him, either to or through themselves, by any man, while actually employed at the armory. They have heard of such complaints only by men who had been discharged for alleged cause, except in one case lately. A man whose work had been rejected by the regular inspector, and the amount of faulty work consequently deducted from his wages, demanded of Colonel R., in a written note, some time afterwards, payment for the condemned work by a specified time, or he would take other measures against him. This I decided to be dissatisfaction with the judgment and act of the inspector, which were no doubt right, and did not constitute a reasonable complaint of the superintendent or the regulations. I did not think it expedient to make further inquiries on this subject.

"It has been stated that the cost of making a musket, in or previous to 1840, was less than it has been since. I am confident, for many reasons, that this cannot be true. The wages for piece-work were much higher then than now, and were very much reduced at Springfield in 1841, and at Harper's Ferry in 1842. The machinery is much more perfect now than it was then, and it is reasonable to suppose that not more than three-quarters, if two-thirds, the time is required to make a musket now than was consumed before 1841. A large part of this difference will be found in the time of *stocking* alone. I have not been able to find anything confirmatory of that statement in the books at Springfield. It is true that the books show the cost of a musket, previous to 1840, to have been \$11 51 and a fraction. The reported number of muskets made in 1840 is 5,967, of which 5,267 were of the old model, and 700 of the new, and the amount of all \$104,106 59; but the cost of each arm, or each of the two models, is not shown. The whole cost, \$104,106 59, divided by the whole number made, gives \$17 44 and a fraction, as the cost of each. If those of the old model cost \$11 51, as they had before, (as reported,) the 5,267 would make but \$60,660 90, leaving \$43,445 69 to be charged to the 700 of the new model, making each of the latter \$62 06 and a fraction. But this last is not reasonable. The probability is, that a large part of the \$104,106 59 was for machinery, which in part, or mostly, should have been charged to previous years; and, therefore, the old-model musket would have fallen between \$11 51 and \$17 44. That part of the book for 1840 is inexplicable by any data it contains, and the previous cost of a musket at \$11 51 is also not to be relied upon as having been the true cost.

"The manner of accounting for public property was equally indefinite, as the periodical returns exhibited what was on hand only, without showing the gain and loss in the time, or the increase by purchased and manufactured, and the decrease by expended and issued."

Colonel Craig's views on this subject are stated in an official letter from him, dated February 8, 1853, (after just eleven years' more experience of the actual effects of the military superintendence than he had at the date of his report first quoted) of which the following are extracts :

"If the present system of superintendence should be abolished, this department will still do its best for the proper management of the armories; but I have not the least doubt that it will prove highly injurious, almost ruinous, to the efficiency of these establishments, and to the interests of the country connected with them.

"To the ordnance corps of the army is intrusted *by law* the construction and preparation of all arms and ammunition. Under the direction of the Ordnance department the national armories are placed *by law*. To remove its officers, therefore, from the immediate charge of these establishments, and to place them under civilians, who will doubtless be men of high political influence, either personally or through their friends, and whom a *department of the army* cannot, from the nature of things, control, will be to do the great injustice to that department of requiring from it, by law, that which the passage of the law now before you will deprive it of the means of accomplishing."

Again, in his official report to the Secretary of War, of the operations of the Ordnance department for the year ending June 30, 1851, he states: "The great reduction in the cost of arms at the national armories, which has steadily progressed since 1841 with no falling off, but rather an improvement in quality, is creditable to the officers in charge of these establishments." And in his report of the next year, 1852, after giving the report of the inspector of armories and arsenals on the condition of the public armories, he states :

"A recent personal inspection of the Springfield armory enables me to speak in similar terms of the excellence of its condition and management; and my experience in the affairs of these establishments for many years convinces me, fully and entirely, that, since they were placed under the present system, many important improvements have taken place, which are, in my judgment, due to the system. The change has produced a great, if not entire, reformation of the abuses formerly existing. Like all other reformations, it has met with opposition, and the reformers have had to encounter the ill-will and hostility of those who had profited by the abuses and are interested in restoring the former state of affairs, and to contend against their personal endeavors to effect that end, as well as the influence they could command in other quarters."

A similar reference is made to letters and reports of Colonel Talcott in 1837, 1839, and 1840, recommending Mr. Robb for transfer from Springfield to Harper's Ferry, mentioning the superiority of the small-arms recently fabricated (in 1839,) over those formerly made, as an evidence of the utility of public establishments for such manufactures; saying that the manufacture of muskets of the new model (flint-lock) had been successfully established, in 1840, at both the national armories, and predicting that the substitution hereafter of percussion for flint-lock will render the arms as nearly perfect as can be attained, and, judging from specimens of foreign arms of the most approved patterns recently

imported, decidedly superior to any arms of foreign manufacture. This is claimed as "the evidence of an experienced officer at the head of the Ordnance department, than whom none were more capable of judging;" Mr. Stevenson referring, at the same time, to statements subsequently made by the same officer in favor of the military and against the civil system, and leaving it to others to reconcile the discrepancy. Now, it is only necessary to consider the dates of the letters and reports of Colonel Talcott, and the condition of the national armories and arms at those times, as compared to what they were when the subsequent statements were made, to show that there is no discrepancy to reconcile. The recommendation of this experienced officer to transfer Mr. Robb to Harper's Ferry was very proper, because he had more qualifications, from his experience at Springfield, for the proper management of the armory, than any other civilian who would be likely to be appointed, and at that time none but civil appointments had been made. His qualifications and Colonel Talcott's recommendation were relative; it was the best that could be done under the system of civil superintendence. So, too, in regard to the quality of the arms; the manufacture of the new model flint-lock arm had been established, and the prediction of Colonel Talcott as to what the arms would thereafter become, has been fully verified by the results obtained under the military superintendence. Colonel Talcott's statements in 1837, '39 and '40, were exactly true as comparing what was done at that time with what had been previously done; and the statements subsequently made by him, with his additional knowledge and experience in regard to the effects of the military superintendence, in favor of this mode and against the civil system, are equally true, and equally "the evidence of an experienced officer at the head of the Ordnance department, than whom none were more capable of judging." His last official report of the operations of the Ordnance department, dated November 4, 1850, contains this sentence: "The less cost and better quality of the manufactures at the national armories, and their improved condition in every respect, since the introduction of the present system of superintendence, fully establish its superiority over that which it superseded."

An extract from the testimony of the honorable John Mills, "a former distinguished representative in Congress from the State of Massachusetts," is next used by Mr. Stevenson to refute an objection to the civil system of superintendence; which he states to be, that "none other than military men can manage and enforce the rules and regulations of the armories, and sustain themselves in an effort to do so, against the clamors of the workmen and their friends." The objection really made, in this respect, is as to what *has* been done, more than to what *can* be done, and is founded on experience, instead of being, as stated by Mr. Stevenson, an abstract opinion. But as he has selected the honorable John Mills, and relies on his testimony as conclusive, from his peculiar "character and qualifications to judge upon this subject," and refers the President to his opinion and evidence, let us examine his evidence as recorded, and see what is his opinion in regard to the relative merits of the civil and the military system of superintendence of the armories. In his direct examination occur the following question and answer, viz:

"*Question.* Which of the systems of superintendency, the civil or the

military, is, in your judgment, best adapted to the wants of the government, and most proper for the supervision of intelligent mechanics?

*Answer.* In 1841 or 1842, when the subject was first agitated here, I expressed an opinion favorable to the civil system. I can't say that that opinion is changed now, although I think there are strong reasons in favor of the military system, and some serious objections to the other. Under the military system, the superintendent would not act under any apprehension of change, or of being displaced. Under the other, there is reason to believe that changes would be made with a change of the national administration. Upon the abstract question, I cannot say that my opinion, first expressed, is changed; but, considering the state of things here, I think it would be better for the interests of the government, of the armorers, and of this community, that the present system should continue."

And when cross-examined the next day to the same point, the following questions were put, and answers given:

*Question.* State the reasons upon which you found your opinion that it would be 'better for the interests of the government, of the armorers, and of this community, that the present system for the government of the national armories should be continued?"

*Answer.* So far as I understand the rules and regulations now enforced, I consider them judicious and necessary for the proper regulation of the establishment; and I suppose, from what I have heard said upon the subject, that the friends of a change in the system intend to change the rules and regulations to some extent. I don't think that such change would be beneficial to the armorers or the government. And I think, as I have already expressed the opinion, that to have the office of superintendent changed with a change in the national administration, would be injurious not only to the interest of the government, but to those of the community here. These are my reasons for the opinion referred to in the question.

*Question by R. H. Walworth.* Are you now of opinion that the system of superintending the national armories by military officers taken from the Ordnance department, is better for the interest of the government, and of the armorers, than a system of superintendence by civilians?

*Answer.* I don't know that I can answer that question better than by the opinion I gave yesterday. Under all the circumstances, as I understand them, I consider it better for the interests of the government, of the armorers, and of the community here, that the present system of superintendence should be continued, and that there should be no change. I was originally opposed to the change, but some time after Col. Ripley came here, I can't say exactly when, an effort was made to re-establish the civil system. I then signed a paper, addressed either to the President or to the Secretary of War, approving of the course pursued by Col. Ripley, and I think it recommended his continuance in the office. That paper was signed by a very considerable number of the citizens here, embracing all political parties, and, in my opinion, the reasons against the change are stronger now than they were then.

*Question by the same.* By the words 'present system of superin-



endence' in your answer to the last question, do you mean the system of superintendence by military men taken from the Ordnance department, as contradistinguished from superintendents taken from civilians?

*Answer.* I do so wish to be understood."

The paper referred to by Mr. Mills in his answer to the question by R. H. Walworth, the signatures to which were headed by Mr. Mills and Hon. George Ashmun, representative in Congress from Massachusetts, and a resident of Springfield, is as follows:

"The undersigned, citizens of Springfield, having learnt that recent attempts have been made to impress the War Department with the belief that the affairs of the United States armory in this place are not conducted with a proper regard to public interest, feel bound to express to the Secretary of War their conviction that the representations which have been made with this view are unfounded. Of course, it is not in our power to pronounce an opinion upon each particular measure of Major Ripley as superintendent of the establishment; but, having the same opportunity with other citizens to observe the course of things, we do not hesitate to say that, under his administration, great improvements, new vigor, and economy, have been introduced into the various branches of the public works, and that, in the conduct of the business of the armory, Major Ripley has been governed by a strict fidelity to the government, and has manifested extraordinary ability as well as tireless devotion to the public interests. It should be understood that none of the undersigned were originally opposed to the change of system which Congress and the War Department have made in the affairs of this establishment, but that experience thus far has compelled us to adopt the opinions which we now express."

The question "propounded by the president of the board," and the answer thereto, on which Mr. Stevenson founds his argument, are as follows, taken literally from the record, viz:

*Question by the President of the Board.* Under the same rules, regulations, and management as those which are now in force at this armory, is it your opinion that a military superintendent would be preferable to a civil one?

*Answer.* It is not."

It is not to be wondered at that such an answer should have been returned to such a question; indeed, it is difficult to conceive how the "propounder" of the question could expect any other answer; for if the rules and regulations and the management of the armory were the same, it seems clear to ordinary understandings that it would make no difference who was the superintendent, and the armories, under such circumstances, would do just as well without any superintendent at all. The undersigned concur with Mr. Mills in his opinion of the advantages of the system of superintendence by military men taken from the Ordnance department, as contradistinguished from superintendents taken from civilians, for the interests of the government, of the armory, and of the community, and claims for it the weight and consideration awarded to it by Mr. Stevenson when using it for another purpose, as "the evidence of an able and distinguished man, a resident of Springfield, and intimately acquainted with the operations of the armory."

Next in order comes the report of R. H. Walworth, a member of the

commission. After detailing certain preliminary proceedings of the commission, he proceeds to state, in regard to the question of the relative efficiency of the civil and military systems of superintendence, that there is no evidence from which "he has been able to satisfy himself that a civil superintendent of the same character and acquaintance with business would not have been able to effect as much, with the same amount of means, as the present military superintendent at Springfield armory." This is a kind of negative opinion, that it is not proved that a civilian with equal qualifications and the same means would not be able to superintend a public armory as well as an ordnance officer. Evidence only strong enough to warrant so weak a conclusion is hardly sufficient to settle the question of relative efficiency; and as Mr. Walworth proceeds to state that, "in reference to the question of economy in the two systems of superintendence, it is impossible for him to form any definite opinion," it follows that, according to his own report, he has come to no conclusion on either question. But in default of ascertaining any facts, in the course of their protracted inquiry, to justify a conclusion on the questions directly submitted to them, Mr. Walworth concurs with a majority of the commissioners in expressing an *opinion* on two points: first, that the public armories should not be sold—a question never submitted to the commission, and having no connexion with the inquiry that were solely constituted to make; and, second, that the public interest requires that the civil system of superintendence, instead of superintendence by the officers of the Ordnance department, should be restored to the armories. How such an opinion was reached, or on what evidence it was based, does not appear. Its value is, therefore, simply what is due to the *opinion* of the four gentlemen, without any facts to sustain that opinion.

John H. Steele's report commences with the declaration that he is convinced "that a *civil* and not a military rule is that which is required for the government as well as management of the national armories." His reasons for this conviction are stated to be his *belief* as to what a military education does and does not fit its recipient for—a general feeling against "military control of purely civil institutions;" an undefined dread that he feels of tyranny or oppression; and his belief that it is his duty to resist every attempt to degrade any class of his fellow-citizens. He is certainly entitled to freedom of belief on this as on any other question, and also to his feelings and sympathies for his fellow-citizens; but he can hardly expect others to consider them so orthodox and appropriate as to shape and regulate theirs by; nor does his calling the superintendence of the armories by ordnance officers "military control of purely civil works," make the present mode of superintendence "military control," nor the national armories "purely civil works." In point of fact there is no military control exercised over the workmen at the national armories, as there is abundant testimony to prove; and the very character of the national armories, and all the legislation concerning them since their establishment, make them not civil, but military works, in charge of and under control of the War Department. As to the cost and quality of the arms, under the two systems of superintendence, which forms the residue of his report, that will be examined in a subsequent part of this report.

nry D. Smith, after stating, in his report, that the commission had such private armories as were easily accessible, and compared their management as to efficiency, accuracy, and safety, and also their cost and machinery, and the quality of arms there made, with those of the Springfield armory, reaches his "consequently" (a most decided *sequence*) that "the members of the commission have all had an opportunity afforded them of judging correctly of the relative merits of the two systems of superintendence." The subject of the board's inquiry is not as to the relative merits of the two systems of superintendence of *military armories*, and not as to any comparison between the public and private gun-making establishments. How could a visit to private establishments enable any one to judge as to how the *military* armories had been managed more than twelve years before, under civil superintendence? And, without this knowledge, how could such management be compared with that under civil superintendence? The only comparison that it was possible to make from such visits was between the private establishments and the Springfield armory; and the difference between them may have been, for all the board knew, much more favorable to the latter when it was under civil superintendence. It is rather difficult to conceive how any reliable comparison could be instituted by flying visits to the private armories, and by examinations not one of which occupied half a day. Could the "efficiency, economy, and cost" of the management of the private armories, "and also their cost and machinery, and the quality of the arms there made," be correctly judged by the board from half a day's examination of each armory, when it required nearly three months to make a similar examination of the Springfield armory, and that, too, without eliciting sufficient facts on which to base and sustain an opinion? Indeed, the members of the commission who make this comparison seem to be under an apprehension that it is, from the very statement of its attending circumstances, too improbable to receive ready credence, and they endeavor to fortify it by their corporal oath, duly sworn before a justice of the peace. Then follow certain innocent expressions, and truisms; the speaker intended to sustain the conclusion he is about to reach, and he endeavors to make a show of fairness in the formation of his judgment. Among the former is his reference to the "closing testimony" of certain witnesses, which testimony, he says, "is, in my judgment, full;" thereby admitting that it is of sufficiently doubtful character to require an expression of his opinion to establish its truthfulness. His justification is that "the military system, as connected with those armories, is everywhere looked upon as wrong in principle, dangerous to the liberties and privileges of freemen, and entirely at variance with the true principles of our civil institutions," is but an assertion, in support of which he brings forward not a single fact; and to find one such fact, the whole of the inquiry will be searched in vain. Indeed, such broad assertions and *ad captandum* phrases seem to constitute the main staple of the reports and arguments which have been used against what is called "the military system" of superintendence of the armories—so called for effect—when it is true that there is not, and never has been, such thing as a military or a civil system, and that the superintend-

ence by a military man is no more a military system than would superintendence by a religious man be a religious system.

The reports of the two members of the commission who came to the opposite conclusion from the four, whose reports have been considered, remain to be noticed.

Colonel Andrews commences his report by stating the course pursued by the commission, and showing that it was not calculated and did not, elicit facts bearing on the question of the comparative merits of the two modes of superintendence of the public armory, that the record is filled mostly with irrelevant and unreliable material, and that recourse must be had to other means of information than that to be found in it, "for a correct and satisfactory knowledge of the question of the best system of government for the national armories." The information, taken from official reliable sources, was offered to the commission, but not received by them. Colonel Andrews refers to that information, given in a statement by Colonel Ripley, in referring to the specific points of inquiry which were named in the law authorizing the commission, "as a much more reliable elucidation of the matter than can be drawn from the testimony taken by the commission." After showing that there is no *military* government of the mechanics employed at the public armories, under the present mode of superintendence, the authority and control over the employes being the superintendent, whether the superintendent be a civilian or an ordnance officer, stating the significant fact that the contractors will not make much of the quality and the cost at the national armories, he proceeds to state such facts as the evidence on this subject not refused by the commission (much of such evidence having been ruled out by a majority vote of the committee)—facts showing that the reduced cost of manufacturing, under the present superintendence, is not due exclusively to the improvement of machinery which have taken place in all branches of manufacturing, but the result, in a great measure, of a better system of regulating the work, as well as a fairer one of fixing wages. These facts are specifically stated in a detailed and tangible form. In this respect, the report of the minority presents quite a contrast to those of the majority of the commission, wherein abstractions and generalities abound, but specific facts are few and far between. We will not enter into a more detailed analysis of this report, but ask an attentive perusal of it, merely pointing out the essential difference between the two modes of superintendence as it existed in practice, viz: "Under the civil system, the most active and restless spirits in the armories governed both the interests and interests of the government, and the superintendent; and cabal and tumults usurped the place of quiet and order. Under the present system, the representative of the government superintends its interests and employes; and while liberal and just to the workmen, he is enabled to secure quiet and order, and protect the interests of the government as well as the true interests of those engaged in its employment. Colonel Steptoe fully subscribes to the conclusion thus reached by Colonel Andrews in his report, and refers to the report, together with Colonel Ripley's statement, as presenting the whole question of the superintendence of the national armories in a light so clear," and, in his judgment, "so correct, that little remains to be said."

be said" by him. Thus adopting that report and statement, he adds, in order to show how the present management is regarded in Springfield—the place, of all others, most interested in its proper management—a copy of a remonstrance submitted to the last Congress, and signed by four hundred and seventeen inhabitants and *legal voters* of that city, against any change in the "excellent system upon which the United States armory in this town has been conducted with such signal success during the past ten years." That remonstrance states: "In that ten years we have seen a new life, vigor, and economy infused into every part of the establishment, to the great benefit of the community in which it is situated, as well as to the great saving of money to the government.

"We have in that time seen the cost of each musket, of which over 23,000 were made during the last year, *reduced more than seven dollars*; and this of itself, with the high character of the men employed and their increased thrift, furnishes a conclusive and triumphant answer to every loose complaint which can be made, while the present condition of the entire establishment challenges a comparison with any armory in the world."

Col. Steptoe also refers to papers in favor of the present mode of superintendence signed by persons employed in the armory, and to the efforts made to show that these papers were suggested, if not exacted, by its officers. The following is the language of a memorial of that kind addressed to Congress, dated March 18, 1852, and signed by one hundred and ninety persons employed in the armory:

"The undersigned, artisans and mechanics employed in the United States armory in this place, do respectfully represent, that the memorial which has recently been circulated in this town, and neighboring towns, asking the abolition of the present system of government in the national armories, and the restoration of the civil superintendency therein, does not express the views and wishes of the undersigned; that, in their opinion, the reasons urged for the proposed change do not exist; that the intimation that the present system 'is in its political tendency mischievous to public liberty,' does not accord with their experience; and that, having no reason to be dissatisfied with the present regulations in this armory, they desire no change therein."

This memorial was forwarded to the representative of the Congressional district by foremen of the armory, accompanied with the following letter:

"The undersigned, having been instrumental in obtaining the signatures to the accompanying memorial, take the liberty to declare that, in so doing, they have not themselves been influenced in the slightest degree, nor have they attempted to influence others, by any consideration or motive unbecoming free citizens and independent men; that they have not themselves been coerced in any manner, nor have they attempted to coerce others. And they further declare that, as all the signatures were obtained by one or other of the undersigned, they have every reason to believe that the act has been a voluntary one by each and every signer, and that the memorial is a true and unbiased expression of the views of all whose names are appended thereto.

"The undersigned have the honor to request that such a disposition may be made of this communication and the memorial as may be deemed most proper."

This letter, as also the affidavit stated by Col. Steptoe to be annexed to Col. Andrews's report, but not printed with it, and therefore subjoined, will show that the allegation in regard to influences exercised over the armorers to obtain their signatures to the memorial is unfounded. The affidavit referred to is as follows, viz:

"The armorers' memorial addressed to the honorable Senate and House of Representatives early in the year 1852, was first, as I believe, suggested by myself to some of the workmen a few days previous to its appearance. The idea was favorably received by most of them, and I was encouraged to proceed. I then asked Mr. L. C. Allen if he thought there would be any objection to such a memorial on the part of the workmen, by Col. Ripley. He replied that he thought Col. Ripley would not object, provided the men would do it themselves, without any dictation or consultation with him or any of the officers, and it was their own free will and act. I agreed fully with Mr. A. upon this point, and conferred with the workmen about it, and it was concluded to have the said memorial drawn up and presented for signatures. Several copies were made for the different shops and placed in convenient positions for the workmen to see. I told Mr. McFarland I would take charge of the paper for him in the room where I worked, and did so. It was placed open upon the desk, and the men were invited to look at it, and sign if they pleased. I urged no one to sign, and made no threats whatever. I am fully satisfied it was the voluntary act of the workmen. We felt it our right and privilege to meet the assertion contained in the 'citizens' memorial' in regard to the present system being 'dangerous to public liberty.' So far as I know, Col. Ripley knew nothing about the existence of the 'armorers' memorial' until after the signatures were obtained, and I do not know that he ever saw the original memorial at all; that was sent to the member of Congress from this district, (Hon. G. T. Davis.) I never had a word of conversation with Col. R. upon the subject.

"I am a son of the late Col. Lee; have been employed in the armory about six and a half years; not now employed. There never has been, to my knowledge, any influence exercised by Col. Ripley, or any of the officers under him, upon the workmen in regard to their elective franchise.

"There is no difference in the systems, except in the enforcing of regulations. I think a military officer is less liable to be influenced by cliques or parties.

"I do not think the regulations of Col. Ripley are more military in their character than those formerly adopted by my father, or more than they are in other large establishments in the vicinity.

"EDWARD R. LEE.

"DISTRICT OF MASSACHUSETTS, }  
Springfield, August 29, 1853. } ss.

"Sworn to before me.

"R. A. CHAPMAN,  
Com'r Circuit Court District of Massachusetts."

The copy of the civil superintendents' return for the fiscal year ending 30th September, 1840, with Colonel Steptoe's analysis thereof, and remarks thereon, are referred to, as bearing particularly on the subject of the cost of the arms. That cost in 1840, reported to have been \$17 44 per musket, and explained by Mr. Robb in his testimony before the committee as being due to a change in the model, and a consequent necessity for a great many new tools and sundry other things to carry out the change, is not confined to the new model, but is stated in Mr. Robb's return to have been the cost not only of the 700 new-model, but also of the 5,267 old-model arms made during that year. In that same return a separate charge, distinct from the cost of the arms, is made for "completing, altering, and fabricating machinery," and "for making and altering tools," &c. (See page 240 Miscellaneous Document No. 76, of the present session.) From this return one of two results is evident; either the cost of the few "new-model" arms made that year was enormously extravagant, or that of the old-model arms was vastly increased beyond what it had been for many years before. This return and exhibit were for the year 1840, and were soon followed by the change in the mode of superintendence made by executive authority. When the political circumstances of that particular year (1840) are remembered, and taken in connexion with the strong inducements then operating to secure the good will and services of political partizans, the enormous increase of the cost of arms may be readily accounted for, and the testimony before the committee (page 78) of the Secretary of War (honorable John Bell,) particularly that portion of it referring to "partizan favorites being permitted to be absent engaged on political business," may be readily understood. After a brief notice of, and answer to, certain objections frequently made to the present system of superintendence, Colonel Steptoe closes his report by stating that, if an economical, efficient and safe management of the national armories; if a consistent, firm control over them; if opposition to unjust, extravagant popular clamor; if independence of all political parties and their uncertain fortunes—if all this be *inexpedient*, then is a return to the discarded system a matter of first necessity."

From the foregoing it will be seen, that the question of the comparative advantages of superintending the public armories by civilians or by ordnance officers was not a new one, but had been fully and frequently inquired into, prior to its coming before the select committee. The testimony on the subject taken before that committee is published in full in House document (Miscellaneous) No. 76 of this session. It is of two kinds, oral and documentary. We will briefly examine both. The whole number of witnesses called and examined was thirteen, of whom the greater part were known to entertain views hostile to the present mode of superintendence, and most of whom had been displaced from the armories under that superintendence. The first of these was Benjamin Moor, formerly master-armorer at Harper's Ferry armory, dismissed by President Taylor while Major Symington was superintendent, and now a candidate for the superintendency of that armory. He is of opinion that the superintendent of an armory should be a practical mechanic; and that as such are only found among civilians, the selection of superintendents of the national armories should be

confined to them. Also, that there should be a degree of familiar intercourse between the superintendent and the workmen, which, he says, cannot be between them and an officer of the army. This last point is more explicitly stated by Mr. Robb in his testimony, wherein he states that the military education of an officer would forbid such intercourse; "his bearing is too military; his training would make him feel himself beneath his rank, if he permitted it, and his social habits would not permit it." The rest of Mr. Robb's testimony is a defence of the management and condition of Springfield armory during his superintendency. Mr. William H. Moor testifies that there was really as much order and regularity in the armory (Harper's Ferry) during the civil, as during the military superintendency; although the practice, under the former, of allowing piece workmen to go to work and quit work at discretion, caused an *apparent* irregularity; that there was as much if not more work done under the civil than under the military superintendence; and he refers to the reports of the Ordnance Bureau in proof of this, which reports bear out his assertions so far as regards the *number of arms made* during equal periods (of twelve years) under each, but not as regards the *quantity of work done*, taking into consideration the almost entire renovation of the armory that was found necessary when the military superintendence commenced, and which has been since made; that the piece workmen were not as cheerful when they were required, under the military superintendence, to work regular hours, as when, under the civil superintendence, they went to work as early and broke off as soon as they pleased; that one military superintendent, Major Symington, arbitrarily cut down some of the workmen's wages after their work had been done; that the workmen of an armory are not capable of getting work elsewhere, owing to their working at only a particular branch of their trade, and are therefore compelled to remain at the armory; that there was less economy in the construction of public buildings under the military than under the civil system, because the materials of the old buildings taken down were not used in constructing the new ones; that skilful workmen would leave the armory, because they felt "self-debased" under the military superintendence; and that the effect of the military system upon the prosperity at Harper's Ferry had been nearly to ruin the place, property being depreciated thirty per cent. on account of the insecurity of the tenure of employment. These, with certain charges against Major Symington, of fraud and violation of standing regulations in using the government material and workshops to have articles made for his private use and benefit, constitute Mr. William H. Moor's testimony.

Ex-Governor Steele, in his testimony, refers to an examination of arms made at Springfield armory by himself and Mr. Smith, of the armory commission, at Springfield last summer, and refers to their report (which is printed at page 260 of document No. 76) for the result of that examination; states that in most respects the improvements in machinery and the manufacture of arms at Springfield armory have kept pace with similar improvements in private armories; but in some they have not, and instances the want of an "index machine" at Springfield armory, which they have at private factories; that the course of the military superintendent (at Springfield) discourages im-



provements in machinery; that he took the sense of the men in the shops at Springfield as to their preference for a military or civil superintendence, and the result of his canvass was, 127 for civil superintendence, 39 for military, 12 indifferent, and 2 non-voters; that the complaints of the workmen were, that they did not know under what rules they were working; they were not allowed spit-boxes; and they complained also of spies and informers. He also instances, as a want of economy under the military superintendence, the cost of the superintendent's quarters at Springfield, which he states must have cost, with land and improvements thereon to accommodate the quarters, not much, if any, less than \$60,000. To prove the system of espionage on the part of the superintendent over the workmen, and of which the workmen complained, he gives one example as "perhaps sufficing," by sending copies of three letters (printed at pages 41 and 42 of document No. 76) from Charles Stearns to workmen in the armory, asking contributions of money to defray the expenses which have been incurred in efforts to restore the civil superintendence; states that these private letters were obtained from the gentlemen to whom they were addressed, by threats and intimidation, as he learned from the gentlemen themselves *after* Colonel Ripley handed him the letters and he read them, and that *when* Colonel Ripley exhibited them to him he became completely disgusted with the man. The residue of Ex-Governor Steele's testimony relates to the appropriations for the national armories, and the expenditures and products at Springfield armory from 1829 to 1863, inclusive. These are given in tabular statements, with his remarks thereon, and his deductions intended to show that the arms made under the military superintendence cost more than those made under the civil. The degree of reliance to be placed upon these tables, and the deduction from them, may be judged from the admission that in the table of expenditures under the military superintendence are included, and charged to the arms manufactured, large sums which were applied to repairs and alteration of flint-lock arms to percussion, and from the acknowledgment, in a note by the witness, that in looking over the table of expenditures he has discovered one error in the amount of expenditures on which the cost of the musket is based. The expenditure alone for altering flint-lock arms to percussion, charged in that statement against new arms made, amounts to \$147,372 39, as shown by the official reports.

The testimony of Adam Rhulman, J. C. Foster, and Armistead Hobbs, contains nothing specially pertaining to the question under investigation, that has not been noticed in reviewing the testimony of the previous witnesses, excepting a more specific reason, given by the last witness, why there was "more contentment among the workmen" under the civil than under the military superintendence, which is, that they could "go to work when they pleased, and work as hard and as long as they pleased." This of course includes the reverse—that they could work as little and as short a time as they pleased. It is not to be wondered at that workmen should be more contented under so lax a supervision as left it to their own discretion to work or not, particularly as the pay-rolls show that they were all the time receiving wages; nor is it difficult to account for the result of Ex-Governor Steele's canvass

of the workshops at Springfield, as stated in his testimony. In the testimony of Mr. Kitzmiller, the only new matter is that in reference to the application of the sums appropriated for repairs and improvements at Harper's Ferry armory. He seems not to have made the proper distinction between appropriations and estimates. The statement in his testimony, as also in that of other witnesses, in regard to matters at Harper's Ferry armory, are fully explained in the statement of Major Symington, in reply to the evidence given before the Select Committee. That statement is appended to this report, and attention is called to it, particularly as regards the allegation against Major Symington, of cutting down the workmen's wages after they were earned. In it he indignantly refuses to notice the charges against him, personally, of fraud and peculation, in having a churn and furniture made in the public workshops for his private use and benefit. The facts in regard to these matters, correctly stated and without coloring, are understood to be as follows: Mr. Frederick Smith, who was employed at the armory, invented a churn, and as there was no turning-lathe in the village except in the armory workshops, he had Major Symington's permission to turn the dasher and top in the shops, in his own time. The churn proved to be a very good one—so good as to warrant his having some made for sale. Of these Major Symington purchased one for his own use; and after a time, another for a friend; for both of which he paid the full price. The furniture referred to consisted of cases for books, &c., which were fixtures in the quarters, are a part of that building, and are still in it.

The testimony of Colonel B. Huger, Messrs. James T. Ames and George Bender, Captain Maynadier, and Hon. John Bell, gives information in regard to the advantages which have accrued to the public interest from the introduction of the present mode of superintendence, and to the reasons for making the change.

The undersigned prefer to call attention to it, and to ask its perusal, instead of further swelling this report by entering into a detailed examination or analysis of it. They deem it proper to make some remarks on what appear to be considered by the witnesses on the other side the more material points in their testimony against the superintendence of the public armories by military officers. The first is, that a practical mechanic is best fitted to superintend these establishments. That such knowledge as a practical mechanic possesses is of advantage, indeed one of the essential requisites, for the proper management of the armories, is admitted; and this knowledge is always available there in the master-armorer. The ninth of a series of interrogatories submitted by the Select Committee to the Secretary of War refers to this point. In his answer thereto he states: "However skilful a mechanic, or engineer, or inventor may be, taken from civil life to fill the place of superintendent, he will probably not possess, in the same degree as a military officer, the professional knowledge in regard to the essentials of a military weapon. A combination of mechanical skill, of the master-workman and other operatives, with the professional knowledge and experience of the military officers, secures the most advantageous management of the national armories." Another objection to the military superintendent is stated to be, that his military bearing

prevents social intercourse between him and the employés. The necessity or advantage of such intercourse to the public interest is not perceived. There is no proof of anything in the intercourse between the military superintendents and the orderly, respectable workmen, in any degree offensive to either party, and an undue familiarity would be very likely to produce, and not improbably was one cause of, some of the objectionable practices under the superintendence of civilians. As regards relative *economy* in the management under the two modes, the reliable evidence is so plain as not to admit of a doubt that it is decidedly in favor of that by military officers. The answer of the Secretary of War to the fifth question of the Select Committee, at page 137 of document 76, is conclusive on this point; and also in regard to the relative quality of the arms, as contained on that and the following page, and in the papers, (C,) pages 163 to 166, same document. Another point is, the want of an "index machine" at Springfield armory, in which respect it is said to be behind the improvements at private armories. This machine is one for cutting various iron parts to different shapes, and is very useful where work is done on a small scale; but in the armories, where the work is so extensive as to give employment to a separate machine for each shape, the index machine would be superfluous. The statement, as given in Governor Steele's testimony, that the workmen complained that they did not know under what rules they were working, is not consistent with one of the most prominent charges against the military superintendent, that his rules were tyrannical and arbitrary. So far as the evidence adduces specific charges of extravagance in expenditure or want of economy, they appear to be confined to the neglect to use old materials, from condemned buildings taken down, in the erection of new structures, and to the cost of the superintendent's quarters. As to the use of the old materials, it is not made to appear that they were fit to put into the new buildings; and the fact, if it be so, that they were not used, when the main object of the military superintendents was to avoid expenditures, so as to verify the accuracy of the estimates as made by themselves, tends to prove that true economy was consulted in their rejection. The actual cost of the superintendent's quarters, including all the materials, workmanship, and accessories of every description, has been furnished to the committee. The facts are proved to be so entirely different from the statements in regard thereto, as given in the testimony, as to show that those statements must have been made without any actual knowledge on the subject by the witnesses, and that they were mere random assertions. As showing the spirit and bias of those witnesses, they cast a strong and well-founded doubt over their entire testimony. The following affidavits of the gentlemen themselves, who were not before the committee, from whom Ex-Governor Steele, in his testimony, states that he learned certain conversations between Mr. Allen, the master-armorer, and them, render it very doubtful whether those conversations ever took place, notwithstanding the particularity with which he details them in his evidence. Attention is called to them in connexion with the evidence as printed at pages 42 and 43 of document No. 76; also to the affidavit of E. S. Allen and others, in connexion with that part of Governor Steele's testimony

wherein he states that he "became completely disgusted with the man," (Colonel Ripley:)

"I have read with surprise the statement put forth by Governor Steele of a purported conversation had with me respecting a letter from Charles Stearns to me, which I voluntarily gave to Col. James W. Ripley. I deny most emphatically ever exchanging one word with Governor Steele upon that letter, and any assertion of his upon that subject is wholly without foundation. My conversations with the master-armorer were of my own seeking, and perfectly free from anything like intimidation or inducement; and I will do him the justice to say that in all matters pertaining to said letter, his conduct has been highly honorable and gentlemanly. The letter of Mr. Stearns was enclosed in one of my own addressed to Colonel Ripley, and handed him by Mr. Allen, at my request.

"JOS. B. HOPKINS.

"COMMONWEALTH OF MASSACHUSETTS, }  
Hampden county. } ss.

"Personally appeared the above-named Jos. B. Hopkins, and made oath that the above statement, by him subscribed, was true. Before me,

"N. A. LEONARD,

"J. P. for the County of Hampden.

"SPRINGFIELD, April 18, 1854."

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"I, Titus Amadon, hereby deny that I ever had any conversation or exchanged a single word with Governor Steele in relation to the letter of Mr. Charles Stearns to me. I deny that Mr. Allen, the master-armorer, spoke to me on the subject of that letter until a week or two after its receipt. When it was spoken of, I commenced the conversation, and before closing I offered to let him take the letter to read, if he wished. I deny that there was ever any inducement or any intimidation, in the remotest degree, used to get the letter from me; it was a voluntary and free act of my own. And I do not hesitate to say that there has been nothing done by Mr. Allen, or any other of the officers of the armory, in relation to that letter, but what was perfectly honorable and gentlemanly, and this I say without any fear of contradiction. Mr. Allen took the letter, and read it, I suppose, and handed it back to me, as I requested. I gave him permission to show it to Colonel Ripley.

"TITUS AMADON.

"SPRINGFIELD, April 18, 1854.

"COMMONWEALTH OF MASSACHUSETTS, }  
Hampden county. } ss.

"Then personally appeared the above-named Titus Amadon, and made oath to the truth of the above statement.

"N. A. LEONARD,

"J. P. for the County of Hampden.

"APRIL 18, 1854"

"On Saturday, October 22, 1853, immediately after the board of commissioners adjourned, Ex-Governor Steele came into the office and shook hands with the clerks. He inquired for Colonel Ripley, of whom he wished to take leave. He desired his best regards to him, &c.; but as he was about leaving the office, Col. R. came in, and a conversation occurred, of which the following is the substance, and nearly the precise language:

"Governor Steele said: 'Colonel Ripley, as we have adjourned, I come to bid you good-bye, and assure you that I have nothing but the kindest feelings towards you; appearances are rather against you now, but the matter is by no means decided. I thought it my duty to tell you so; but I am open to conviction.'

"Colonel Ripley expressed his regret that the board had adjourned without having made an examination of the books and accounts of the armory, saying that he had been assured it would be done—that they were the only reliable source from which they could obtain correct information of the accountability of the two systems of superintendence.

"Governor Steele replied: 'It ought to have been done. I am free to confess it. We ought to have examined the books, and intended to do so; but it is too late now; and to tell the fact, we have not had time. I am perfectly satisfied, from what I have seen of them, they are correct, and are admirably kept.'

"Col. R. remarked that it was possible there might be some slight errors in them; that would seem to be unavoidable, and to be expected.

"Governor Steele further stated that, from what he had seen, he was satisfied that Mr. Robb was entirely unqualified for the place of superintendent, and was utterly incompetent—that he did not hesitate to tell any one so. To which Colonel Ripley replied, that he had always respected Mr. Robb as a man, and it did not become him then to speak of him as superintendent.

"Governor Steele again said that the matter was by no means decided yet, and any information that might be forwarded to him would be considered. Turning to the clerks, he added: 'Any information which any of you can give me will be thankfully received. I have already asked Mr. Allen to write me,' (meaning Mr. L. C. Allen, clerk to master-armorer.) Colonel Ripley suggested that if any information was to be sought for in the books, it would be proper to apply to himself.

"Governor Steele, considerably excited, retorted: 'As a member of the board, I shall call on whom I please for information.'

"The reply of Col. Ripley was, 'that, as the officer in charge of the armory, he was the proper person from whom to ask for information, and that he should not allow the clerks, nor any one else, to furnish such information without his consent.'

"Gov. Steele then said, 'I did not come here to enter into an argument, and will have no more conversation with you,' and left abruptly, under much excitement.

"The foregoing conversation took place in the master-armorer's office of this armory, at the time before mentioned, in the hearing of the undersigned. And we further state, that when Gov. Steele said he was open to conviction, and asked for further information, Col. Ripley re-

plied that he thought it rather late in the day to call for information, after the board had adjourned, having been in session nearly three months without making such a call.

"Gov. Steele further said, that he was satisfied that the whole establishment is admirably conducted.

"E. S. ALLEN, *Master Armorer.*

"J. W. PRESTON, *Comdg. Officer's Clerk.*

"L. C. ALLEN, *Master Armorer's Clerk.*

"J. W. BARRETT, *Paymaster's Clerk.*

"G. W. WINCHESTER, *Book-keeper.*

"HAMPDEN, *ss.*

"Then the above E. S. Allen, J. W. Preston, L. C. Allen, J. W. Barrett, and G. W. Winchester, personally appearing, made oath to the truth of the foregoing affidavit. Before me,

"R. A. CHAPMAN,

"*Justice of the Peace.*

"APRIL 20, 1854."

In the early part of the investigation, certain interrogatories were propounded by the Select Committee to the Secretary of War, the purport of which was to obtain information requisite to force a comparison between the operations of the armories under the civil and military superintendencies respectively. These interrogatories, with the Secretary's answers to each, in full, are printed in document No. 76, pages 132 to 182 inclusive. They show the following facts:

That there is no material difference between the rules and regulations for the government of the operatives employed at the national armories under the respective superintendencies of civilians and of ordnance officers; and that the rules under both modes of superintendency are believed to have been such as are requisite for the proper, efficient, economical, and systematic management of any large manufacturing establishment, and are understood to be no more stringent than those in existence at large private factories.

That the essential and marked difference between the management of the national armories under the two modes of superintendence, consists in the extent to which the regulations for their government have been enforced; a strict compliance with them being required under the superintendence by military officers, instead of their mere preparation and publication, with a toleration of their loose observance, as under the superintendence by civilians, and that the arms cost less under the superintendence by military officers than under that by civilians; and that the improvement in the arms has gradually and steadily advanced, under the military superintendence, in the accuracy and uniformity of the component parts, the excellence of the material, and the skilfulness of the workmanship, the proof of which is found in the results of actual use of these arms by troops in service, both in peace and war, in garrison, in the swamps of Florida, and on the scouts and marches of our western frontier; during all the vicissitudes incident to which variety of service, these arms have maintained a character of high excellence. That the average amount of monthly wages received by the workmen

is greater under the military, than it was under the civil superintendence; that every workman employed at the armories is at liberty to quit the employment when he pleases; that there is not any difficulty in obtaining the requisite number of good, competent armorers, or other workmen, on account of the rate of wages paid, or because of the superintendence of the armories by military officers; and that the employment of military officers to superintend the national armories, affords to the War Department facilities for improving the quality and character of fire-arms, which it would not as readily command from civil superintendents.

In answer to the request of the Select Committee to furnish them, besides answers to the specific interrogatories propounded, any further information in his possession relating to the national armories, that in his judgment may be proper and useful to aid them in the inquiry they are directed to make, the Secretary of War states as follows:

"Both modes of superintending the national armories by civilians and by military officers have been tried. We are not, therefore, left to conjecture or abstract reasoning to determine which is preferable, but have the test of actual experience. That has proved that 'the appointment of military officers to superintend the manufacture of arms at the national armories' is not only compatible with, but highly advantageous to the public interest. If such appointments are not 'consistent with the nature and character of our civil government,' the objection seems to me equally applicable to the command of arsenals as of armories. Citizens are employed at both; implements of war are constructed at both; and the difference between repairing and manufacturing small-arms and constructing gun-carriages, caissons, and preparing fixed ammunition, does not present to my mind a distinction which would require a citizen officer in one case and a military officer in the other. Having never believed that to devote one's life to the military service of his country was incompatible with the highest respect for the laws and institutions of that country, I have not considered a soldier less entitled to confidence and trust because of his profession; and as the law of the country (act of February 8, 1815, sections 3 and 9) makes it the duty of the Colonel of Ordnance to attend to the manufacture of arms, and all kinds of ammunition and ordnance stores, and places the national armories under the direction of the Ordnance department, their superintendence would seem properly to devolve upon the officers of that corps, and has not been considered by me as civil employment, but as the discharge of a military duty, as important and essential to an army as any other.

"Viewing the national armories as a part of the military establishment of the country, I think it desirable to exclude from them the influence of party politics. Their superintendence by officers of the army, it is hoped, will always secure such exclusion. Permanence of a good and competent superintendent, and the prompt removal of an incompetent one, are equally desirable. The employment of army officers who do not owe their position to the success of political friends, and who can at any moment be transferred to other duty, it is believed offers the most certain means of securing both these objects. A civil superintendent who owed his appointment to political considerations, would naturally feel his position to be temporary, and would rarely resist the

importunity to bestow the subordinate places upon his political friends. The end to be anticipated from this would be a deterioration in the character of the military weapons, upon the efficiency of which so mainly depends the military power of a country, its triumphs or defeat, its glory or its shame, in a period of war."

Such are the deliberate views of the Secretary of War on the subject of the superintendence of the public armories—not given as mere opinions, but as the result of experience, and sustained by the facts elicited by that experience. Such views have been entertained and expressed by all the Secretaries of War who have been in office since the change in the mode of superintendence; nearly every one of whom has personally investigated the management of the public armories. These are the executive officers who are *officially responsible* for the proper management of these establishments, and are most interested in having them managed in the manner that will best conduce to the public interest. With such testimony before them, the undersigned cannot hesitate in forming a judgment on the question in favor of the present mode of superintendence, as established by the act of 23d August, 1842. The expediency, propriety, and wisdom of the measure then adopted, in regard to the government of the armories, have been established by subsequent experience, and a change therein will most certainly operate to the injury of the public interest, and is to be strongly deprecated.

The argument that private armories and other manufacturing establishments are well managed, and prosper under the government and direction of civilians, and that therefore the national armories will do the same, is unsound, because applied to cases not parallel. The superintendents of private establishments, so long as they do their duty and manage those establishments in the manner to make them most prosperous, will be sustained by their proprietors. They do not hold their appointments at the sufferance of the employés, and consequently have no fear of controlling them by proper rules, exacting a just return of work for the wages paid, and ejecting from employment any idle, insubordinate, or turbulent hands. It is different with the public armories. There the superintendents, if civilians, feel that the tenure of their offices is dependent in a greater or less degree on the popular voice, and on the prevalence of the political party that brought them into office. They must naturally court popularity, and must favor their own party. They are afraid to act independently in enforcing even wholesome rules and exacting proper order, system, and regularity, in attending to work, if the same be distasteful to those in employment. They cannot exercise a proper control over them, holding their offices, as they must do measurably, at their sufferance; and the employés are well aware of this, and take advantage of it accordingly. This is not mere theory—the practices at the armories under the civil superintendence show it to be true in point of fact. The objection against "supervision by army officers of *civil works*," whatever force it may have as a general abstract proposition, does not apply to the national armories. They are not *civil works*, nor do they partake of that character any further than do all other works for furnishing supplies and materials requisite for military operations. The work done at ar-



venals, viz: the repairs of arms; the construction of gun-carriages, implements, equipments, and accoutrements; the manufacture of percussion caps, of bullets, and of cartridge-bags; and the preparation of ammunition for small-arms and artillery, most of which requires for its execution the employment of citizen mechanics, (not enlisted men,) who are so employed in this country under ordnance officers, and have been so employed since the foundation of the government;—such work is universally admitted to pertain properly and legitimately to that corps of the army which is specially organized to attend to it. So of the casting of cannon and projectiles at the foundries, and the manufacture of powder; these are done for the government, under the direction and supervision of ordnance officers, who superintend the private establishments where such work is done, so far as they are employed for the government. The want of national factories for these purposes compels the government to resort to private establishments. The necessity for doing so is regretted by all who are most competent, from information and experience on such matters, to form a correct judgment on the subject, and they do the best they can, under the circumstances, to take care of the public interest by putting the private factories under the supervision of army officers so far as they have the power to do so. The same objection will apply equally to the construction of the fortifications, bridges, and roads, necessary for the operations of an army, and to all such work as requires for its execution more mechanical skill than is possessed by the rank and file of the army. It may be, with equal reason and force, extended to the supervision of navy yards; indeed to all work where it is necessary to employ the services of others than trained soldiers for the preparation of articles requisite for military purposes. Where the line of distinction can be definitely drawn between military and civil works, any encroachment beyond it is wrong, and should not be tolerated; but it is as wrong on one side as on the other, and a civil superintendence over military works is no more right than a military superintendence over civil works.

The undersigned, therefore, report upon so much of the subjects of inquiry referred to the Select Committee as relates to the national armories, that the superintendence of the manufacture of fire-arms at these public establishments by military officers is compatible with the public interest, and consistent with the nature and character of our civil government, and that a change in that mode of superintendence is inexpedient and ought not to be made.

LAWRENCE M. KEITT,  
*For minority.*







THE WINDER BUILDING.

[To accompany bill H. R. No. 400.]



JUNE 13, 1854.

R. TAYLOR, from the Committee on Public Buildings and Grounds,  
made the following

REPORT.

*The Committee on Public Buildings and Grounds, to whom was referred the memorial of W. H. Winder, praying Congress to purchase the fire-proof building on the corner of F and Seventeenth streets, owned by him, and now in the use and occupancy of the government, respectfully report:*

That the Committee on Public Buildings and Grounds of the last Congress, having the same subject under consideration, made a report, (S. O. 102,) which the committee submit herewith as a part of their report, as follows:

JANUARY 30, 1852.

*The Committee on Public Buildings and Grounds, to whom was referred the memorial of William H. Winder, praying Congress to purchase the fire-proof building on the corner of F and Seventeenth streets, owned by him, and now in the use and occupancy of the government, respectfully report:*

That the building referred to in the memorial is a large and well-constructed edifice, in the immediate vicinity of the War and Navy Departments, and now used and occupied by the government under a contract with the proprietor. It has been built with great care, of the best materials, and is of massive structure, convenient arrangement, and perfectly fire-proof. The front on F street is two hundred and nine feet, the ell on Seventeenth street one hundred and one feet, and both the main building and the ell fifty-three feet deep. It contains, exclusive of the basement, one hundred and thirty rooms, and is seventy feet high from the pavement. The new treasury building has the same number of rooms, and no more.

One of the members of the committee, who has had some practical experience in building, made a personal and thorough examination of the edifice from its foundation to the roof, and satisfied himself that it is constructed of the best materials and in the most approved style of workmanship. The proprietor seems to have spared no expense to render the building complete and substantial in all its parts, and the

success with which he has executed his purpose is creditable to him as a gentleman of enterprise and public spirit.

When the building was erected, the business of the government had so increased as to render the departments proper entirely insufficient for its convenient and prompt despatch. For want of adequate room, the government was dependent to a great extent upon private individuals, for the use of houses which were inconveniently arranged and insecure from the danger of destruction by fire. The business of the departments was transacted in houses separate from each other and scattered over the city. These houses were held by government as tenant of various individuals, to whom a large amount of rent was paid, in addition to the extra expense incurred for repairs, and watchmen and messengers, in consequence of the locations and insecurity of the tenements. Repeated efforts had been made by the President and heads of the departments to induce Congress to authorize the erection of suitable edifices for the accommodation of the departments and security of the public archives. These efforts having failed, the memorialist was induced by the verbal and written suggestions of Governor Marcy, then Secretary of War, and John Y. Mason, Secretary of the Navy, to undertake with his own private means the erection of the building now offered to the government. Governor Marcy and Mr. Mason having assured him that the building when erected would be rented by the government at a liberal rate of compensation, he commenced and completed its construction as rapidly as a due regard for the proper execution of the work would allow. Since then it has been in the constant occupation of the government, and is under rent at the rate of one hundred and seventy-five dollars for each room. The whole amount paid annually by the government for the use of the building is \$21,575, and it accommodates several bureaus of the Interior, Treasury, War, and Navy Departments.

The memorialist proposes to convey the building and lot to the government for the sum of \$300,000, payable in the bonds of the government, bearing interest at five per cent. and redeemable in twenty years. The committee have no doubt that, at this price, high as it may seem, it would be wiser policy to buy the property than continue to rent it. But it appears from the letter of the late government architect, Robert Mills, esq., hereto appended, that he values the building, exclusive of the lot, at \$260,000. The committee, in view of all the circumstances, think the sum of \$250,000 a fair price for the building and ground. This amount cannot be deemed unreasonable; and, in view of the fact that the building cannot be dispensed with by the government for many years, and as a measure of economy, the committee recommend its purchase at that price.

There is evidently no disposition on the part of Congress at this time to engage in the erection of such buildings as the increased and increasing wants of the government demand; but should Congress, even at its present session, of which there is not the slightest probability, authorize the construction of proper edifices, the present building could not be dispensed with for a period during which the annual rent would amount to almost its full value. The rent for ten years at the rate now allowed for the use of the building, with interest on the several payments, will amount to more than the sum the committee has proposed

to pay for it. Should, therefore, the government continue to rent the property for a period of ten years, as it will necessarily be compelled to do under any circumstances, it will have paid to the owner, at the expiration of that time, a sum greater than its present value, and the property still remain in the hands of the proprietor. The government, by advancing the rent, may possess itself of the title, and have the use of the building and lot in perpetuity.

Should Congress at a future time carry out the design of President Jackson, and erect upon the sites of the State, War, and Navy buildings, other structures better adapted to the despatch of the public business and the security of the valuable archives of government, the building of the memorialist will still be useful. Indeed, we can imagine no period in the future history of our rapidly increasing republic, when such an edifice, so entirely secure from the casualties of fire, so conveniently located in regard to the several departments, and so well adapted for the preservation of public records, will not be useful to the government. At present, with all the departments crowded to excess, the bureaus of each scattered over the city, the public archives exposed in some cases to imminent danger of destruction by fire, and no provision against these evils likely to be made by Congress, the use of this building cannot possibly be dispensed with. The government must continue to use and occupy the property at a heavy annual rent, until other buildings are erected, subject, however, at all times, to the will of the landlord, whose pecuniary interest, it is not impossible to suppose, may at any time induce him to seek a more profitable tenant. It is neither consistent with wise policy, nor the dignity of a great government, to be thus dependent upon the cupidity or caprice of a citizen. Should the owner at any time insist upon the termination of the tenancy, without previous provision being made by government for such a contingency, there is no mode of estimating the inconvenience to which it would be subjected by the interruption of its regular business, and the hazard to which the records and archives would be exposed. Indeed, there is no other building in the city, in which the bureaus now occupying the house of the memorialist could be as conveniently accommodated, or where the public records could be lodged with equal safety. These and other considerations satisfy the committee, not only of the propriety, but of the absolute necessity which exists for securing to the government the ownership of the property. There is no public building belonging to the government, of the same substantial character and extensive capacity, which has not cost a much larger sum than the amount fixed as the value of that of the memorialist; and the committee are well satisfied that one could not be built for that sum. The new treasury building cost \$640,000, exclusive of the value of the ground, and contains only the same number of rooms. The statement of Mr. Mills, before referred to, shows the cost of each room in that building to be something less than \$5,000, while the cost of each room in the building of the memorialist, of equal capacity, is only \$2,000. The new Post Office building contains only seventy-seven rooms, being twelve more than half as many as are contained in the building of the memorialist, and that cost \$450,000, exclusive of the value of the ground. The cost of each

room in this building, as estimated by Mr. Mills, is \$5,844. It is apparent, from these facts, that government, in erecting a building to supply the place of the one now rented from the memorialist, would incur an expense greatly beyond the sum proposed to be paid by Congress for that. In addition to the increased cost of building to be incurred by government, should be considered, in the estimate of expense, the rent to be paid for the present building while the new structure is in course of erection, and until it is prepared for the reception of the public officers and records. It may be said with perfect safety, that government could not build a house of like dimensions, in the style now adopted for government edifices, and purchase the ground, for a sum less than twice as much as it will cost to purchase the building now proposed to be sold.

A report of the Secretary of the Treasury, made in 1849, on the subject of this building, the correspondence between Mr. Winder and Secretary Marcy, and certificates of the architect of the Capitol and builders of the city, are hereto appended.

The committee recommend that the Secretary of War be directed to purchase the building of the memorialist, and upon his execution of an unencumbered title to the building and lot, to pay him the sum mentioned in the bill herewith submitted.

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CITY OF WASHINGTON, January 6, 1851.

DEAR SIR : At your request I have examined the subject submitted to me by you, namely, the value of the structure erected and owned by you, now occupied by several bureaus connected with the War and Navy Departments, located on the northwest corner of 17th and F streets, in this city, and would present the following statement :

The dimensions of this building cover an area of 13,819 square feet, rising five stories above the basement, and containing one hundred and thirty rooms of suitable dimensions for office purposes, all made fire-proof, and heated by means of hot-water furnaces. The walls are all built of brick, as also the arches supporting the floors, and plastered in the best manner. The exterior walls are faced with *mastic* cement, resting on a marble base, each front arranged in architectural order, with a rich iron gallery extending the whole front on each street, the roof covered with metal.

Comparing the accommodations of office rooms presented by this building with those furnished by the public buildings here, relatively, as respects the difference in architectural finish and quality of materials (cut stone and brick,) and the difference in price of work and materials according to the time of erection of each building, my opinion of the value of your building for government purposes may be stated to be two hundred and sixty thousand dollars.

This value is predicated upon the following ground: First, the State and War Departments buildings, erected of brick, cost \$90,000, and containing each twenty-eight rooms above the basement for office purposes; then,  $\frac{22,000}{28}$  per room, \$3,214 per room; second, the treasury building, erected with cut-stone work inside and out, entirely fire-proof,



and with an extensive colonnade and portico, cost, at its present stage, \$640,000, and contains one hundred and thirty rooms for office purposes above the basement; then,  $\frac{\$4,923}{130} = \$37.87$  per room, \$4,923 per room; third, the General Post Office building, erected of marble, in the richest order, made entirely fire-proof, and with a number of columns, cost \$450,000, and contains seventy-seven rooms for office purposes above the basement; then,  $\frac{\$450,000}{77} = \$5,844$  per room, \$5,844; fourth, your building, erected of brick, made fire-proof, and finished as before described, estimated at \$260,000, containing one hundred and thirty rooms, would give the cost per room \$2,000. At the time the War and State Departments buildings were erected, materials and labor were both very high; these buildings could now be constructed for \$56,000, which, according to the number of office rooms they contain, bring each room to cost \$2,000.

Respectfully yours, &c.,

ROBERT MILLS,  
*Architect.*

*Report of the Secretary of the Treasury, as to the necessity of additional room for the use of the government in the transaction of business, and as to the expediency of purchasing "Winder's building."*

TREASURY DEPARTMENT,  
March 2, 1849.

SIR: I have the honor to transmit herewith, in answer to the resolution adopted by the Senate on the 23d ultimo, a copy of a letter from the Secretary of the Navy, dated 27th ultimo, and a copy of a letter from the Secretary of War, dated 28th ultimo, with sundry papers accompanying the same. These communications contain all the information now in possession of this department relative to the subjects embraced in the resolution.

Very respectfully, your obedient servant,

R. J. WALKER,  
*Secretary of the Treasury.*

HON. G. M. DALLAS,  
*Vice President of the United States,  
and President of the Senate.*

WAR DEPARTMENT,  
Washington, February 28, 1849.

SIR: I have the honor to acknowledge the receipt of your letter of the 24th instant, requesting information in regard to additional rooms required for the use of the officers of this department, and the expediency of purchasing the building recently erected by Mr. Winder.

The enclosed reports, from the heads of the bureaus now accommodated in that building, contain all the information which I can furnish

respecting the fitness of the rooms in Mr. Winder's building for the use of their offices, and the necessity for additional rooms. I have no means of forming an estimate of what would be a fair price for the building, should Congress direct it to be purchased.

Very respectfully, your obedient servant,

W. L. MARCY,  
*Secretary of War.*

Hon. R. J. WALKER,  
*Secretary of the Treasury.*

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NAVY DEPARTMENT, *February 27, 1849.*

SIR: I have the honor to acknowledge the receipt of your letter of the 24th instant, enclosing a copy of a resolution of the Senate, respecting the building belonging to Mr. William H. Winder.

The despatch of public business, and the safety of the archives of this department, have made it necessary to rent, for the use of the Navy Department, ten rooms of Mr. Winder's building. Congress made an appropriation for the purpose, and the rooms are now occupied, and will be required until the government shall construct or otherwise procure a building larger than the executive building appropriated for this department. The rent paid is \$1,500 per annum.

I am not prepared to express an opinion on the expediency of purchasing the building, instead of constructing one on the public grounds; but I believe that Mr. Winder's building is well constructed, and conveniently arranged for public offices.

I have the honor to be, very respectfully, your obedient servant,  
J. Y. MASON.

Hon. R. J. WALKER,  
*Secretary of the Treasury.*

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ORDNANCE OFFICE,  
*Washington, February 27, 1849.*

SIR: In relation to the honorable Senate's resolution concerning the building erected by Mr. Winder at the corner of 17th and F streets, and your directions to state whether the number of rooms assigned to this department has been sufficient for the comfortable discharge of its duties, or, if more are required, what number; also as to the expediency of purchasing the building, and whether the mode of heating is satisfactory, I respectfully state that ten rooms were applied for as necessary for the convenient accommodation of the Ordnance Bureau; that nine were assigned to me in the first, second, and fourth stories; that at least one or two more rooms are desirable, and the whole, or the greater number, to be contiguous for the more convenient discharge of duty.

As regards the heating of the building, I presume it can be well regulated, although it has not yet been done. I need not state that open

replaces, with proper chimneys, are considered more healthy than furnaces, and also afford a better ventilation in both summer and winter, and the want of them will always constitute an objection to the building.

In relation to the expediency of purchasing the building, I consider that it is well built and fire-proof; and the amount of rents to be paid will doubtless exceed the cost of the structure, before any other suitable building will be erected for the safe deposit of the valuable archives and documents pertaining to the several bureaus now located herein.

I am, sir, respectfully, your obedient servant,  
G. TALCOTT, *Colonel Ordnance.*

Hon. W. L. MARCY,  
*Secretary of War.*

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BUREAU OF TOPOGRAPHICAL ENGINEERS,  
*Washington, February 27, 1849.*

SIR: In obedience to your directions of the 26th instant, addressed to the heads of the several bureaus of the department, I have the honor to submit the following replies to the several questions therein contained:

*Question 1.*—Whether the number of rooms assigned to them has been sufficient for the comfortable discharge of the duties of their respective offices; or, if more are required, what number?

The number of rooms applied for by this bureau was twelve; the number assigned, eight. Since then, from absolute necessity, an additional room has been occupied—making, in all, nine. I am of opinion that the business of this office requires at least two more rooms, conveniently situated in reference to our present rooms.

*Question 2.*—Upon the expediency of purchasing the Winder building?

There must be rooms for public business; these rooms should be fire-proof, and at the exclusive control of the government. The government should, therefore, either purchase the Winder building, or lease it for a series of years, and erect a suitable building. The Winder building is fire-proof, and the rooms are of good size; but it has, in my judgment, two serious defects:

1st. It is too high, being five stories; the fourth and fifth stories being, from their position, excessively inconvenient as public offices.

2d. It is destitute of fireplaces and chimney stacks, which ought to be parts of all buildings in our climate, in addition to any arrangement for warming by furnaces.

Yet, however, taking into consideration the time which will probably elapse before a more suitable building will be erected, it will, I think, be found to be the more economical course to purchase the Winder building; it will be of value to the government after a more suitable building shall have been erected. For certain branches of business—for instance, the accounting department—it will not be so inconvenient from its four or five stories, as it is for the present bureaus by which it is occupied.

*Question 3.*—Whether the mode of heating is satisfactory?

The mode of heating has been satisfactory of late in the rooms of this office; and, as experience is required in the management of the furnaces and flues, it will without doubt be improved. But the air of furnace heat is often oppressive, and I do not think any substitute to the heating and ventilating by fireplaces, so as to exclude the latter entirely, as in the Winder building, can ever be free from serious inconveniences.

Respectfully, sir, your obedient servant,

J. J. ABERT,

*Colonel Corps Topographical Engineers.*

Hon. W. L. MARCY,

*Secretary of War.*

PENSION OFFICE,

*February 27, 1849.*

SIR: In answer to the questions appended to the resolution of the Senate of the 23d instant, a copy of which accompanies this note, I have to state that the number of rooms assigned to this office is sixteen, in Winder's building. They are sufficient for our accommodation. My opinion is decidedly in favor of having the building purchased by government.

I have the honor to be, very respectfully, your obedient servant,

J. L. EDWARDS.

Hon. W. L. MARCY,

*Secretary of War.*

PAYMASTER GENERAL'S OFFICE,

*February 27, 1849.*

SIR: In compliance with your instructions, I have the honor to state that the Pay department will require eight rooms in Mr. Winder's new building. It now has seven, but some of them have five clerks in them. I am also of opinion that the building is well calculated for public offices, with the exception of being heated by a furnace; if that can be altered, as Mr. Winder assures me it can, it will be preferable to any the government can obtain.

Respectfully, your obedient servant,

N. TOWSON,

*Paymaster General.*

Hon. W. L. MARCY,

*Secretary of War.*

ENGINEER DEPARTMENT,

*Washington, February 27, 1849.*

SIR: In reply to the inquiries just received in relation to the buildings in which this department is now located, I have to say:

1st. That the rooms assigned to its use are sufficient in number for the comfortable discharge of the duties of the office, and that they are of good size and convenient arrangement.

2d. That I am not able to reply definitely as to the expediency of purchasing the building. The circumstances of the case may possibly afford reasons for a purchase, otherwise not warranted. I know nothing of the materials or workmanship applied to this structure, and I think, on the general principle, that the government should erect its own buildings.

3d. The heating of the rooms occupied by this office has not been satisfactory except at certain times. For several days in succession, and at two or three different times, the rooms have been so cold that little or no office work could be done.

I am, very respectfully, sir, your most obedient,

J. G. TOTTEN,  
*Brevet Brigadier General, &c.*

Hon. W. L. MARCY,  
*Secretary of War.*

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SURGEON GENERAL'S OFFICE,  
February 28, 1849.

Sir: In reply to the circular of the 26th instant, from the Department of War, requiring the heads of bureaus in Winder's building "to state whether the number of rooms assigned them has been found sufficient for the comfortable discharge of the duties of their respective offices," &c., I am instructed to report:

That the number of rooms assigned to the Medical Bureau is not sufficient for all the business of the office; more especially when the meteorological duties, which have been temporarily suspended on account of the accumulation of other business growing out of the war with Mexico, shall be resumed. There will then be two additional rooms required, as was originally asked for.

With respect to the expediency of purchasing Mr. Winder's building, it is believed that, unless it shall be determined to erect a suitable public building with as little delay as practicable, the greater security of the public archives, and a more perfect system of police, &c., would seem to render such a measure expedient.

In regard to the mode of heating the building, it is believed that the irregularity of temperature which has been complained of may be owing to the fact that the occupants of many of the rooms, in order to cool them, open the windows and doors, instead of closing the flues, thereby withdrawing a great amount of heat from the general supply, and not on any fault in the principle itself, which is believed to be a good one.

I have the honor to be, very respectfully, your obedient servant,

H. L. HEISKELL,  
*Acting Surgeon General.*

Hon. W. L. MARCY,  
*Secretary of War.*

OFFICE OF COMMISSARY GENERAL OF SUBSISTENCE,  
*Washington, February 27, 1849.*

SIR: In compliance with your request, I have the honor to state that an additional room is necessary to this office in "Winder's building," and it is very desirable that the "rooms" should be contiguous; such not being the case at present.

I should not deem the purchase of this building as expedient; but that one far more comfortable might be erected, capable of containing all the offices appertaining to the department under the Secretary of War.

The method of heating is, perhaps, as satisfactory as could be obtained in a building of similar construction; but if fireplaces existed, it would be more healthy, and greatly to be preferred.

Very respectfully, your obedient servant,

GEO. GIBSON,  
*Commissary General of Subsistence.*

HON. W. L. MARCY,  
*Secretary of War.*

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MAY 27, 1847.

SIR: I have completed my estimates for the proposed building for offices. My arrangements are, to make the building fire-proof, and finished in excellent style. The expenditure will be so very large, that I do not feel at ease to go on, without an explicit understanding that it will be taken by the government when it is finished, which will be by next season. I propose to lease it to the government for five years, for \$175 per room, including fire, and attendance on fuel.

If the honorable the Secretary will address me, accepting the proposition above, I will proceed, without delay, to the completion of the building.

Very respectfully, yours,

W. H. W.

HON. W. L. MARCY,  
*Secretary of War.*

Upon the original the department placed the following endorsement:

"Received 28th May, 1847. W. H. W. is ready to go on with building, if government will give assurance that they will lease it."

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WAR DEPARTMENT, *Washington, May 29, 1847.*

SIR: I have received your letter, proposing to erect a fire-proof building, suitable for public offices, in the vicinity of this department, and desiring to have an explicit understanding that it will be taken by government when finished. In reply, I can only say, what I said to you verbally, *that there is great necessity for better buildings than those now used for several of the bureau offices; and if such an one as you propose were at this time completed, I should not hesitate to transfer to it most of*

*the offices under my charge outside the walls of this department. With respect to the future, I cannot give any positive assurance, because I have no authority to bind the government by a contract, to be carried into effect at a future period; but if, as you propose, your building shall be completed next season, I am quite certain that I shall engage with you for the occupation of a considerable portion of it, and that the public interest would require the use of it, or some building similar to it, until the contemplated new buildings for the War and Navy Departments shall be erected.*

Very respectfully, yours,  
W. L. MARCY, *Secretary of War.*

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SIR: I have the honor to acknowledge the receipt of your letter of the 29th ultimo, in reply to mine of the 27th of same month. Understanding this reply to be a full and distinct acceptance of the proposition contained in my letter, to which you refer, so far as you deem yourself authorized to act, I shall forthwith proceed to complete the building at the earliest possible period.

I have the honor, &c.,

W. H. W.

Hon. W. L. MARCY,  
*Secretary of War.*

Upon the original the department has the following endorsement:  
"W. H. W., as his proposition has been accepted, will proceed to complete his building."

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WASHINGTON, D. C., January 27, 1852.

DEAR SIR: I have examined the building belonging to Mr. Wm. H. Winder, on the corner of 17th and F streets, now occupied by several of the bureaus of government, and, at your request, have estimated the cost of erecting a fire-proof building of corresponding dimensions and accommodations, which I find would be about \$240,000, exclusive of the ground.

My opinion having been likewise asked by you in reference to the character of Mr. Winder's building, I have only to say, that I believe it to be a substantial, well-built house.

I am, dear sir, very sincerely, your obedient servant,

THO. U. WALTER.

Hon. R. H. STANTON.

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I examined the building of Mr. William H. Winder, at the corner of F and 17th streets, and give it as my opinion that the erection and completion of such an establishment would cost the government two hundred and fifty thousand dollars.

U. WARD, *Builder.*

WASHINGTON, *February 23, 1849.*

In reply to your note of this day, I have to reply, that I fully concur in what Mr. Ward says of your building. I am fully satisfied it would cost government upwards of a quarter of a million of dollars. The building is well built, and of the best materials, as the most minute investigation will more fully show, and as the certificates herewith annexed most conclusively show.

Respectfully,

C. L. COLTMAN, *Builder.*

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The Chief of Bureau of Ordnance says, in his note, "I should be satisfied with such work on any building under my charge."

The Chief of Topographical Bureau says, "I did not examine it particularly as it progressed, but I believe it to be a substantial, well put up work."

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We certify that we have examined the new building erected at the corner of 17th and F streets, north, by Wm. H. Winder, esq., in all its parts, from the cellars to the attic, and find every part of the same in good order, manifesting great faithfulness in the manner of executing and finishing the work. We are well satisfied that full justice has been done by the builder in the performance of his contract, both as regards material and workmanship.

ROBERT MILLS, *Architect.*  
U. WARD, *Builder.*

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Col. J. D. Graham, of the Topographical Engineer Department, says, in a letter under date 4th June, 1850:

"The opinion I expressed on the occasion you allude to, was, and it is still entertained by me, that it would be greatly to the interests of the various departments of the government now occupying the building at the corner of F and 17th streets, if that building were the property of the government, instead of being rented by it from year to year, as I understand is now the case.

"I have occupied several rooms in that building since August, 1848, (now nearly two years since) and, from my own experience and observation, I do not think the public agents occupying it could be more conveniently or more comfortably accommodated, at all seasons of the year, in any building, than they have been in it.

"The fire-proof character of the building I consider of the first importance for a public edifice where valuable papers and documents are deposited, and especially where many of them are of a description impossible to be restored if once lost. Every public officer at Washington must be duly admonished of the great importance of this consideration, from the irreparable and serious losses the government has



sustained on several occasions within the last twelve or fifteen years, by the conflagration and total destruction of some of its most valuable buildings and archives.

"The walls of the building in question are massive, and they appear to be well and securely laid.

"My rooms have always been in the fourth or uppermost story of the building; and I will here add, that all my assistants, and I, much preferred this story to any other part of the building. The stairways, of cast-iron, are of easy slope, causing but little fatigue in ascending; and here we are free from the noise, bustle, and dust of the streets, while in summer we enjoy the coolest breezes that pass over the city.

"The draughtsmen engaged in my office, in the most delicate drawings, have never perceived the slightest tremor in this part of the building, even during the strongest winds.\* The building has always appeared to us firm, and as steady here as upon the ground-floor, which is certainly a strong proof of the permanency of its construction and the solidity of its walls.

"The mode of heating and ventilating has proved entirely satisfactory to my party.

"On the whole I consider the building so desirable a one for the government that I presume it will never cease to be rented by it, unless it should be the purchaser.

"As a question of pecuniary policy, those charged with that branch of the public interest can better judge than I can, but I should suppose in all such cases true economy would consist in purchasing.

"J. D. GRAHAM,  
"Brevet Lieutenant Colonel Topographical Engineers."

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NATIONAL OBSERVATORY,  
*Washington, August 6, 1850.*

\*SIR: In reply to your note requesting a statement of my opinion as to the furnace erected by you for warming, through water, these buildings, I have the pleasure to say that it is an admirable one; I have tried it for several winters. The temperature of rooms thus warmed is delightful; the heat is soft and pleasant, and is without that dryness which, in rooms heated with the common hot-air furnace, is so much complained of by persons in delicate health as dry or unpleasant.

Respectfully, &c.,

M. F. MAURY.

WILLIAM H. WINDER, Esq., *Present.*

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\*NOTE.—When the house was unroofed by the hurricane, those in this story were unconscious of its being done.

The character of the heat in the new building at the corner of F and 17th streets is very agreeable, and the degree of heat under most convenient control.

TH. LAWSON, *Surgeon General.*

THO. HARRIS, *Chief of Bureau of Medicine and Surgery.*

J. L. EDWARDS, *Commissioner of Pensions.*

J. M. M'CALLA, *Second Auditor.*

CHAS. RADZIMINSKI, *Boundary Office.*

W. F. REYNOLDS, *Lieut. Topographical Engineers.*

CHAS. H. HASWELL, *Engineer-in-chief, U. S. N.*

J. J. ABERT, *Col. Corps Topographical Engineers.*

J. F. POLK, *Chief Clerk Second Auditor's Office.*

Col. Graham says, the heating and ventilation have been satisfactory to his party.

There is not a public building in Washington where there are not ten times more complaint in regard to smoke, heat, or ventilation, than there is with regard to this.

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*Appendix to report H. R. No. 102.*

TREASURY DEPARTMENT, *February 2, 1852.*

SIR: In compliance with your verbal request, I have the honor to transmit herewith, copies of a communication and accompanying papers from this department, made to the Senate on the 2d March, 1849, they being all the papers in its possession in relation to the purchase of Winder's building.

In answer to your further request as to my views of the propriety of purchasing the building referred to, I would state, that there is a necessity for its occupancy by the government until additional accommodations of equal or greater extent are provided for the public officers by the erection of suitable buildings for that purpose. Notwithstanding the accommodations now afforded, I have had frequent representations made to me by the chief clerk of the department, and heads of several bureaus, of the necessity for a still greater number of rooms to accommodate the rapid increase of the public business, and accumulation of papers consequent thereon.

The necessity which now exists for crowding a number of officers in a small space, impedes the progress of the public business, and should be avoided; and the valuable papers of the department are placed in the basement of the treasury building, where, in consequence of dampness, they are liable, in a few years, to be entirely destroyed.

The appropriation of an amount for the purchase of a building which would otherwise, in a few years, be absorbed by the rent thereof, seems to be but sound policy; and in view of the fact that the government is now occupying, and must continue to occupy, the edifice known as Winder's building, at an annual rent of about \$20,000, I cannot but approve of and recommend an appropriation sufficient for its

urchase, and thus vest in the government the entire control of that building.

I am, very respectfully, your obedient servant,

THOS. CORWIN,  
*Secretary of the Treasury.*

Hon. G. S. HOUSTON,  
*Chairman of the Committee of Ways and Means,  
House of Representatives.*

The committee also append the following extract from the joint letter of the Secretaries of War and Navy to the President, which will show the condition of the government offices at the time the memorialist engaged to erect the building now occupied by the government. (Doc. No. 186, 1st sess. 29th Cong., vol. 6.)

"The necessity for this building is extremely urgent. The inconveniences to which public business is now exposed can be duly appreciated only by those who daily experience them. The most valuable documents are now deposited in several private buildings, which have repeatedly been on fire, and which, notwithstanding every precaution for safety, cannot but be considered as liable to the most serious accidents.

"The rooms are, moreover, crowded with persons, books, papers, drawings, models, and instruments. There is no space to arrange them properly, and no space for suitable cases.

"The loss of time and confusion, consequent on this condition of things, are serious obstructions to public business; but, when we consider the hazard to which so many valuable documents are exposed, the loss of which would be irreparable, we feel ourselves bound by the most imperious considerations to recommend an early construction of this building.

"W. L. MARCY,  
"GEORGE BANCROFT.

"To the PRESIDENT."

The following correspondence between the committee and the Secretary of War, and a copy of the letter addressed by him to the chairman of the Committee of Ways and Means, on the 14th of January last, are also submitted as part of this report:

WAR DEPARTMENT,  
*Washington, March 11, 1854.*

SIR: I have the honor to acknowledge the receipt of your letter of the 7th instant, enclosing a copy of a report and bill for the purchase of the building of W. H. Winder, at the corner of F and Seventeenth streets, and asking my opinion whether it would be better to buy said building at \$250,000, or at a valuation, than to lease it for five years at \$30,000 per annum; and, in reply, to state, that in the opinion of the department it would be better to purchase the building, at the price

named by you, than to take a lease of it for five years at the rent demanded.

The report and bill are herewith returned.

Very respectfully, your obedient servant,

JEFFN. DAVIS,  
*Secretary of War.*

Hon. J. L. TAYLOR,  
*Of Committee on Public Buildings and Grounds,  
House of Representatives.*

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WAR DEPARTMENT,  
*Washington, March 19, 1854.*

SIR: In compliance with your request of the 15th instant, I have the honor to transmit, herewith, a copy of the notice served on this department by W. H. Winder, esq., in reference to his building at the corner of F and Seventeenth streets.

Very respectfully, your obedient servant,

JEFFN. DAVIS,  
*Secretary of War.*

Hon. J. L. TAYLOR,  
*Of Committee on Public Buildings and Grounds,  
House of Representatives.*

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SIR: The year for which the building on the corner of F and 17th streets has been rented by the department will expire on the 30th June, 1854. Should government desire to retain the building, it can do so upon the following terms and conditions: The undersigned, proprietor, asks, from and after that date, that the department take a lease for five years, beginning on the 1st July, 1854, by paying thirty thousand dollars for the year ending on the 30th June, 1855, and similarly for each of the four succeeding years, with the same conditions as now exist in regard to repairs, and surrender in good condition; government reserving the privilege of retaining it at pleasure after that period on same terms. Should these terms not be acceptable to government, notice is hereby given for the evacuation and surrender of the premises and building on the 30th June, 1854.

It may not be improper for the undersigned here to state some of the many reasons which have induced him to give the foregoing notice, as he deems them essential to a just and intelligent consideration of its reasonableness and propriety.

In the first place, he can show, by official evidence, that he was induced by government, viz: heads of departments and of bureaus, to erect this building; that they made the strongest representations of it

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extreme urgency, (see extract annexed of joint letter of Secretaries of War and Navy.) The undersigned having made his estimates of the cost of such a building, and having ascertained the expense to government of the old, combustible, segregated, and many of them distant buildings, consented to erect such a building as he had been urged to undertake, upon receiving assurances that, when completed, it would be occupied by government at the rate, per room, stipulated, (\$175.) The departments deemed some such building essential, and indeed so indispensable for the convenient transaction of public business, and for the safety of documents and papers, which had been endangered by repeated fires, and were constantly liable to destruction, and which, if destroyed, could not be replaced by the expenditure of millions, that any rent for such a building, within the rates of what a building of equal extent erected by government would stand, would be a matter of little consideration in comparison with the advantages to be secured for the ready transaction of public business, and the safety obtained for invaluable documents. The Second Auditor, (the only person, occupying an out-building, called upon for a report of the expenses incurred by the renting of a building tenanted by a portion of his force,) states the aggregate expenses to equal \$265 per room per annum, (see letter of Second Auditor to Secretary of the Treasury.) Unwilling to proceed with the erection of this building upon verbal communications, liable to misapprehensions by succeeding Secretaries, the undersigned addressed a letter to the Secretary of War stating this difficulty, and that, before he could begin the structure, it was indispensable that this state of affairs should appear in writing, together with the assurance of its occupation on the terms specified. The Secretary, in his reply, states that he can only repeat what he had verbally said, that there existed great necessity for that or some similar building; that although he could not make a contract for the future, yet, if the building should be finished by the next season, as he expected, the department would certainly take rooms. To which the undersigned replying, that, understanding the letter of the Secretary to be as full and complete an acceptance as it was in his power to make, the undersigned would proceed to the erection and completion of the contemplated structure, the department endorsed the letter, "W. H. W., as his proposition has been accepted, will proceed to the erection of the building."

The building was completed by next season, as promised, but at a cost so greatly exceeding the estimate, that the rent demanded from the 30th June next is not greater in proportion in its actual cost, including value of the ground, than the rent asked and assented to by the department is to the estimated cost. Again: After completion, only a portion of the rooms were taken by the department, paying not half the rent agreed upon, the department prohibiting, at the same time, the letting out of any of the other rooms to parties applying. In this condition the proprietor was suffering for several years the cost exceeding estimates, and he receiving less than half the rent agreed upon and predicated on the estimates. At length an official letter from the Secretary of War, repeating and perpetuating that prohibition, being brought to the notice of Congress, it authorized and made appropriation for taking all the rooms.

Again: the value of property in the city of Washington has, since the erection of this building, advanced very considerably, as have, also, rents generally.

Again: at the period when the proprietor of this building was contracting for its rent, government leased for fifteen years, at sixty thousand dollars per annum, the "bonded warehouses" in Brooklyn. The cost of their structure could hardly have exceeded the cost of this building. None of these warehouses are fire-proof, every floor being of wood, occasioning, of course, the necessity of insurance upon all the merchandise which should be stored in them; while in this building not a particle of wood is in any of its floors, and every flight of stairs is entirely of iron, at a cost exceeding twenty dollars each step. Its fire-proof condition is officially attested by the heads of departments and of bureaus, by government architects sent to examine it, and by the Committee on Public Buildings, its members in person examining and confirming the concurrent testimony of other parties. In Philadelphia, a row of warehouses (all with floors of wood, several of which are rented by government) is leased for twenty-four thousand five hundred dollars per annum, the cost of building which could hardly have exceeded the half of that of this building. The Census Office rented, for \$1,700 per annum, a building for which its proprietor paid \$10,000. Nor can these rents be considered unreasonable. Had the owners of the Brooklyn bonded warehouses built them, at no greater cost, in the city of New York, there can be little hesitation in saying that at this moment they would bring a much larger rent than government pays. Of those in Philadelphia, very lately completed, government pays no more for those rented by it than is paid by every other tenant of the same row. And the Census Office rent, after investigation, was decided to be only fair and reasonable, compared with the rent of other buildings. In this city, small rooms in the second story of buildings not on the avenue, and in no respect fire-proof, are renting for \$200 per annum per room. Again: government owns no fire-proof building here or elsewhere, the undersigned thinks may be safely asserted, for which the cost per room does not exceed the rate now required for this building; and so far as those in this city, and the knowledge of the undersigned extends, he might say two and three times as much, exclusive even of the value of the ground upon which they are built, the rooms themselves in no respect superior, having only in some cases fewer stories. The treasury building is occupied without complaint throughout its entire fourth story, as is this building, with objections. The official objection to the number of stories comes from its first floor; while the occupants of the fourth story (see letter of Colonel J. D. Graham) express their preference for it. Many of the committee-rooms in the Capitol, and probably the Senate Chamber and Hall of Representatives themselves, cannot be reached, from the west front, with fewer steps than will reach the fourth story of this building. The War, Navy, and State Departments buildings, with their combustible floors, and exclusive of the value of the ground upon which they are built, cost government a pro rata rate very much greater than that required for this building. The concurrent official testimony is, that the rooms in this building are commodious and well arranged—the qualifications being that

Some make objection to the number of stories, and to the mode of heating; while others do not object to the former, and many express great satisfaction with the latter. The mode of heating, if really objectionable, can be altered to any other mode desired, at a very trifling expense. (See letters of Secretary of Navy, heads of Bureaus, &c.) Again: if government were to advertise, to-morrow, for a fac-simile of these premises, to be occupied by government on the terms and tenure of this, there does not exist the man, who is able, and has the experience of the undersigned before him, who would take the matter into serious consideration; the objections being not only the uncertainty by government, but that for such a property, even in large cities, where very wealthy men reside, there is not one in a hundred thousand who could and would become the purchaser on fair terms, not only because so few have the amount of money to spare for a single item, but because, also, in dividing their estate among their children, it would become the sole and only portion of one of them, who could neither engage in business with it as capital, nor, what is worse, could conveniently divide it among his children, while the chance of sale would necessarily be limited to some half-dozen persons, with the further chance of their being disposed to purchase, and of their having, just at that juncture, the amount to spare. To expect to sell to persons in distant cities is a forlorn expectation. These difficulties exist with peculiar stringency in Washington, there being few persons able to purchase, and distant capitalists less disposed to purchase in Washington than in their own neighboring populous cities. These are only some of the objections made to the undersigned by some of the wealthiest men of New York; besides, in a large city, there are so many purposes for which such a building could be used, that its occupation, on fair terms, would be certain, while here it is most uncertain.

This building has above its basement one hundred and thirty rooms, precisely the number in the treasury building above its basement. If, instead of one building, the undersigned, with a more careful foresight, had made twenty, with the same aggregate number of rooms, (about even to a house,) he would not only have had saleable property, within the reach of purchasers generally, but no one would have considered the rent now asked for this a high price for the twenty fire-proof buildings, though containing no more accommodations than are afforded by this house.

Again: the library-room of Congress, a single room, with all its costly walls standing, has been made fire-proof by an iron roof, shelves, &c., at a cost exceeding one hundred thousand dollars. The iron in the building at the corner of F and Seventeenth streets cannot be less in quantity or cost. In addition to the very great number of girders visible, exceeding a ton each, there are great numbers buried in the walls over the windows. At the corners of the building, and at all the cross-walls of the rooms, at every few rows of bricks are wrought-iron ties, bracing the building strongly together. This mode is common in massive buildings in England, but very rarely adopted in this country. Besides the iron ties visible, and those already described, are many others concealed between the sides of the arches and the floors. The hardware, furnaces, &c., are of a costly character. Again: government may sur-

render it at a moment when no opportunity exists for making other permanent and favorable disposition of it. This uncertainty of tenure is a most serious disadvantage, and is one ruling motive for this notice, as the proprietor has been and is in negotiation, which he hopes may be favorably concluded, as, in all probability, it would have been but for the unfortunate stringency in the money market. The terms are not so favorable as asked of government, but they have the valuable ingredient of permanency.

Again: it is the policy, and, it may be added, the justice of government, to deal fairly and even liberally with its own citizens, and to render a fair equivalent for services rendered. This it has not done in the first few years, certainly, of its tenantry of this house. It gives contracts for printing, and for other matters, at rates which render large profits certain, with no hazard, and comparatively small expenditure. In cases where it has been reputed unprofitable, \$50,000 have been appropriated as indemnity or remuneration. Instances without number might be cited of cases involving the same principle. In this case nothing is asked for the past, notwithstanding the excess of cost, and the receipt, for so long a period, of half-rent, with prohibition against letting the vacant rooms, but that government, having profited by these matters, will now pay something like half of what it will certainly cost it for accommodations to be erected not a particle better, and being superior only in exterior ornaments, and, *perhaps*, by having fewer stories; the undersigned might add, one-half of what all other accommodations now cost government. The treasury building, if completed according to its plan, would add some one hundred rooms of additional *four-story* buildings.

Having stated the terms for the future occupancy of the building, the undersigned would add the concurrent testimony of heads of bureaus, of the Committee on Public Buildings, of heads of departments, and of the Committee of Ways and Means, that this building would be useful to government *after* the completion of the War and Navy Departments buildings, whenever erected. The archives of the Treasury Department, in its damp basement, are fast hastening to decay, and, unless frequently aired, a greater loss would ensue in a few years, by their inevitable destruction, than could be repaired by the cost of half a dozen such bulidings.

The undersigned is content to lease on the terms affixed to this notice of surrender, to sell on appraisement by disinterested parties mutually chosen, or even at the minimum price estimated by the Committees on Public Buildings, of Ways and Means, and on Finance, or to accept the surrender of this building at the time required by this notice. The undersigned will add his conviction, that if the whole matter be left to the discretion of the department, of renting, purchasing, or evacuating the premises, as shall be best for the interest of government, and fair to the proprietor, then, and in that case, the disposition of the proprietor will be found such as to leave no room for difficulty.

The subject of the purchase of this building may come up during this session. For that reason the undersigned has reluctantly given this notice, and for that reason, mainly, he has entered into this long explanation, giving some of the many causes inducing the notice, lest a sup-



osition might be entertained that it was intended to have a bearing on that question. Notice to quit the premises must be given six months before the expiration of the year for which it is rented. This fact will explain this early action, otherwise the notice would not be given until after that question should have been settled.

In this exposition the undersigned has laid open not only the burdenomeness of his position, but its weakness also. Aware, as he is, of the folly of an individual placing himself in antagonism to government, he is desirous of avoiding even its semblance. He has, on this account, greatly trespassed on your attention and on your courtesy, that no color for such a purpose could rest on him; and that, should the honorable Secretary of War have, at any time, occasion to refer to this notice, he will so do it as to exclude entirely from the minds of those to whom he may communicate it, any view of the matter which could give maintenance to such an interpretation.

With mortifying regret at the length of this communication, and appealing to the considerate candor of the honorable the Secretary of War, and the circumstances of the case, the undersigned is, with great respect, most truly, his obedient servant,

W. H. WINDER.

The Hon. SECRETARY OF WAR.

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*Extract from joint letter of Secretaries of War and Navy to the President.*

"The necessity for this building is extremely urgent. The inconveniences to which public business is now exposed, can be duly appreciated only by those who daily experience them. The most valuable documents are now deposited in several private buildings, which have repeatedly been on fire, and which, notwithstanding every precaution for safety, cannot but be considered liable to the most serious accidents.

"The rooms are, moreover, crowded with persons, books, papers, drawings, models, and instruments. There is no space to arrange them properly, and no space for suitable cases.

"The loss of time and confusion, consequent on this condition of things, are serious obstructions to public business; but when we consider the hazard to which so many valuable documents are exposed, the loss of which would be irreparable, we feel bound by the most important considerations to recommend an early construction of the desired building.

"W. L. MARCY.

"GEORGE BANCROFT.

"To the PRESIDENT."

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WAR DEPARTMENT,

Washington, January 14, 1854.

SIR: Since the estimates for the service of this department for the next fiscal year were sent to Congress, the proprietor of the building

rented by the government, at the corner of F and Seventeenth streets, has served a notice on this department, to the effect that from and after the 30th day of June next, when the year for which it was rented will expire, the government must take a lease of the building for five years, at a rent of \$30,000 per annum, or surrender the premises to him.

The present rent of the building is \$19,500, and the increase demanded is \$10,500, which, considering the advance in the price of property and of rents in this city, is not believed to be unreasonable. But whether the rent asked be too high or not, there is little option in the case; for, should the building be surrendered, no other suitable and safe place can be obtained, in which to locate the various offices now accommodated in it.

I have, therefore, the honor to request that the item in the civil and diplomatic bill, (lines 452, 453, 454, pp. 19, 20,) "for rent of house," &c., may be amended so as to secure the building for the use of the department.

Very respectfully, your obedient servant,

JEFFN. DAVIS,  
*Secretary of War.*

Hon. GEO. S. HOUSTON,  
*Chairman Com. Ways and Means, House of Reps.*

The state of affairs revealed in the foregoing, shows that some action must be had by Congress, either to lease on the terms of the proprietor, to purchase the building, or to evacuate it for other premises. The government has no buildings in which to accommodate, even temporarily, the inmates of this building while others are being erected. And if it be even possible to get a sufficient number of private buildings, the expense will hardly be less than the rent demanded, and all the evils mentioned in the joint letter of the Secretaries of War and Navy to the President, herein recited, will again be encountered, with additional danger from fire and all the inconveniences of removal. Besides, if the inconveniences were so serious when the government had those private houses near the departments, and contiguous to each other, how aggravated will they be when separated perhaps many squares apart.

It is clear that the United States would be a great deal worse off by any temporary change, and that the government cannot possibly furnish itself with accommodations which would cost them annually less than is asked for the rent of this building. And as the opinions officially given in this report state that this building will be needed even after the government shall have erected buildings for the departments, your committee are of opinion that this house must be retained; and they therefore report a bill authorizing the Secretary of War to lease it on the terms mentioned by the proprietor; and if, in the opinion of the Secretary, the interest of government would be better subserved by a purchase, that he be authorized to purchase it at a valuation to be made by disinterested parties, mutually chosen.





THIRD REGIMENT MISSOURI VOLUNTEERS.

[To accompany bill H. R. No. 401.]

JUNE 13, 1864.

ETHERIDGE, from the Committee on Military Affairs, made the following

REPORT.

*Committee on Military Affairs, to whom was referred a bill explanatory of an act approved July 19, 1848, entitled "An act to amend act entitled 'An act supplemental to an act entitled An act providing the prosecution of the existing war between the United States and republic of Mexico, and for other purposes,'" report :*

That on the 18th of July, 1846, a requisition was made by the Secretary of War, under the instructions of the President, upon the governor of Missouri, "for one additional regiment of infantry to be mustered into the service of the United States at Independence, (Missouri) and sent forward with all possible despatch to join the forces of General Kearny." That in pursuance of this requisition, a regiment was raised in the State of Missouri, consisting of nine companies, which were mustered into the service of the United States for the term of twelve months, unless sooner discharged." Said regiment consisted of nine hundred and thirty-two officers, non-commissioned officers, musicians, and privates, and was known as the third Missouri infantry volunteers. Subsequently to the requisition, and after the regiment had been raised and mustered into the service, orders were issued by the Secretary of War to muster out of the service and honorably discharge the volunteers forming said regiment. It appears from the returns of E. E. McLean, 2d lieutenant 1st Missouri, mustering officer, that several of the nine companies were ordered into the service in the latter part of August and early in September—none later than the 14th September—and all of them were mustered out of the service from the 29th September to the 2d October of the same year, at Fort Leavenworth.

Our committee believe that it is but just that those patriotic men who promptly responded to the call of their country, and volunteered their services for its defence, should receive the three months' extra pay provided for by the act of Congress, and promised those engaged in "actual service during the war." Many of these volunteers were raised in remote parts of the State, and marched a long distance to reach the place of rendezvous at Fort Leavenworth. Many of them doubtless gave up lucrative employments at home for the

twelve months' service in which they had enlisted, and were ready to perform that service. Under these circumstances your committee believe them entitled to the favorable consideration of Congress, and accordingly report herewith a bill for their relief.

CHARLES H. WILGUS.

[To accompany bill H. R. No. 402.]

JUNE 13, 1854.

ETHERIDGE, from the Committee on Military Affairs, made the following

REPORT.

*Committee on Military Affairs, to whom were referred the petition, papers, and proofs in the case of Charles H. Wilgus, for the use and destruction of property, and losses occasioned by the American troops whilst at Tampico, during our war with Mexico, report:*

That they have carefully examined and considered the papers and proofs, and in the judgment of the committee the following facts are fully established:

. That the petitioner, Charles H. Wilgus, is a citizen of the United States; that he now resides, and at all times since 1846 has resided at Tampico, in the State of Tamaulipas, in Mexico.

. That the petitioner and his wife, in the fall of 1846, owned and occupied at Tampico a rancho, containing between six and seven thousand acres of land, called "*El Paso de Doña Cecilia*;" that said rancho was stocked with cattle, horses, and mules, and was occupied and used by the petitioner in carrying on the dairy business, and in raising stock.

. That after the American forces took possession of Tampico, in the fall of 1846, a large portion of said forces were encamped in the immediate vicinity of the petitioner's rancho; that whilst there, they tore down and burned the petitioner's fences and cattle-pens for fuel; they killed his cattle, his cows and calves, for their provisions and use, and committed various depredations upon his property; and their conduct and threats so alarmed his family and servants, that he was compelled to leave, and did leave, his said rancho, with his family, abandoning his property to the use, license, and mercy of the troops.

. That application was made by the petitioner to Generals Shields and Quitman, who were commanding at the time at Tampico, for redress; that he was promised compensation and redress by them; but when such redress was had, these generals moved on to join General Taylor at Vera Cruz; and that Colonel Gates, who succeeded them in command at Tampico, and was for a time military governor there, did not afford him any redress whatever.

These facts are all fully and particularly verified by the petitioner himself, and are sustained in detail, in all the material particulars, by the

at Tampico, on written interrogatories, in due form, and regularly certified by the judge, and then by the American consul, under his official seal; and the affidavit of the petitioner, together with the testimony of the witnesses, leaving off the certificates and formal parts, are printed with this report.

Mr. Wilgus being a citizen of the United States, although residing at the time in the enemy's country, was there without any intention of abjuring his allegiance to his native government, and in the pursuit of gain. Our troops had the benefit of his property; they used his fences and cattle-pens for fuel, and his stock for provision; and your committee can see no reason why the government ought not to pay for the same. It seems that the officers in command were aware of the depredations and use of the property of a citizen of the United States, and that the petitioner was promised compensation; besides, it is believed by your committee that the American army invariably paid for all their supplies, even such as were procured from citizens of Mexico, during the war, and that such was the general order regulating the government of our troops at Tampico at that time.

The items of the account appear reasonable; but the items of \$600 for loss of 12 acres of Guinea grass, in consequence of destruction of fences, of \$750 for losses by reason of suspension of sale of milk, and \$400 for the loss of 8 mules and 10 horses, seem rather remote and of a questionable character. The committee have concluded, of these three items, amounting to \$1,750, to allow only \$400—leaving the balance of the account seventeen hundred and sixty-two dollars. They recommend the passage of a law giving the petitioner this last amount, in full of all claims in the premises, and report herewith a bill for that purpose.



affidavits of Santiago Rangel, Francisco Pasaron, Sotero Hernandez, Bernabe Sanchez, and Sidney Udall.

The items of the property, and of loss and damage claimed, and sworn to by the petitioner, are as follows:

Dec., 1846.—To 1,800 yards of rail-fence, torn down and used by the volunteers for fuel, at 25 cents per yard	\$450
To 10 milch cows, at \$15 each	150
Jan., 1847.—To 7 heifers, of three years, at \$8 each	56
March, 1847.—To 3 milch cows, at \$15 each	45
To 5 calves, of two years, at \$6 each	30
To 3 calves, of one year, at \$4 each	12
April, 1847.—To 2 cattle-pens, consisting of 400 yards strong fence, torn down for fuel, valued at 50 cents per yard	200
To 7 heifers, of two years, at \$6 each	42
To 3 heifers, of one year, at \$4 each	12
To 4 milch cows, at \$15 each	60
To 7 milch cows, at \$15 each	105
To 12 acres of Guinea grass, in two fields, lost on account of the destruction of the fences by the volunteers, at \$50 per acre	600
To damage done to the house and out-buildings by the volunteers, after the abandonment of the rancho	200
To loss sustained, at \$5 per day, in the sale of milk, by being compelled to suspend all work at the rancho during five months of the encampment of the volunteers in its vicinity	750
To loss of 8 mules, worth \$25 each, and 10 horses, worth \$20 each, which were stolen during said period	400
	<u>3,112</u>

CHARLES H. WILGUS.

TAMPICO, May 15, 1852.

The witness Santiago Rangel swears that he is unable to say positively what has been the loss; but he calculates that it was a little more or less than three thousand dollars. He was the steward in charge of the rancho.

Francisco Pasaron swears that the loss, in his judgment, exceeds two thousand five hundred dollars.

Sotero Hernandez swears, among other things, that he was a laborer on the farm; he gives several instances of killing cattle and burning up fences, and he says that he himself was at one time beaten and kicked until he was ready to fall dead; he, however, states that he is unable to estimate the damages to the petitioner.

The witness Udall, among other things, also speaks of the loss, but declares he is unable exactly to state the amount.

The proofs in the case seem to have all been regularly taken in court

t Tampico, on written interrogatories, in due form, and regularly certified by the judge, and then by the American consul, under his official seal; and the affidavit of the petitioner, together with the testimony of the witnesses, leaving off the certificates and formal parts, are printed with this report.

Mr. Wilgus being a citizen of the United States, although residing at the time in the enemy's country, was there without any intention of abjuring his allegiance to his native government, and in the pursuit of gain. Our troops had the benefit of his property; they used his fences and cattle-pens for fuel, and his stock for provision; and your committee can see no reason why the government ought not to pay for the same. It seems that the officers in command were aware of the depredations and use of the property of a citizen of the United States, and that the petitioner was promised compensation; besides, it is believed by your committee that the American army invariably paid for all their supplies, even such as were procured from citizens of Mexico, during the war, and that such was the general order regulating the government of our troops at Tampico at that time.

The items of the account appear reasonable; but the items of \$600 for loss of 12 acres of Guinea grass, in consequence of destruction of fences, of \$750 for losses by reason of suspension of sale of milk, and \$400 for the loss of 8 mules and 10 horses, seem rather remote and of a questionable character. The committee have concluded, of these three items, amounting to \$1,750, to allow only \$400—leaving the balance of the account seventeen hundred and sixty-two dollars. They recommend the passage of a law giving the petitioner this last amount, in full of all claims in the premises, and report herewith a bill for that purpose.



JOSHUA VANDRUFF.

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JUNE 13, 1854.—Laid upon the table, and ordered to be printed.

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PRINGLE, from the Committee on Indian Affairs, made the following

REPORT.

*the Committee on Indian Affairs, to whom was referred the claim of Joshua Vandruff, have had the same under consideration, and respectfully report :*

That it appears from affidavits before the committee, that in the years 1829, 1830, and 1831, Joshua Vandruff sustained considerable losses by the depredations of the Sac Indians and their allies; but, in the judgment of the committee, the case is not within the beneficial provisions of the non-intercourse act, nor the rule almost uniformly followed by Congress in making appropriations for damages committed by Indians upon the property of citizens of the United States; therefore the committee ask to be discharged from the further consideration of the same.

All which is respectfully submitted.



CHARLES A. GRIGNON.

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JUNE 10, 1854.—Laid on the table and ordered to be printed.

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R. PRINGLE, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred the petition of Charles A. Grignon, for relief, have had the same under consideration, and respectfully report:*

That it appears that the petitioner, on the first day of June, 1847, was appointed interpreter to the Green Bay sub-agency for the Menomonees, and entered into a contract with the Indian sub-agent, acting in behalf of the United States, to perform the duties pertaining to his office for the annual compensation of three hundred dollars; that in 1848 he acted as interpreter in the negotiation of the treaty with the Menomonees, and in assisting the commissioner appointed to distribute the funds for the mixed bloods under the treaty, for which the petitioner asks an extra compensation of three hundred dollars.

The petitioner is not, in the opinion of the committee, either legally or equitably entitled to extra compensation; he was acting under a contract for stipulated wages, which were paid to him. Your committee, therefore, ask to be discharged from the further consideration of the prayer of the petitioner.

All which is respectfully submitted.



REPRESENTATIVES OF JOSEPH WATSON, DECEASED.

[To accompany bill S. No. 224.]

JUNE 13, 1854.

MR. ORR, from the Committee on Indian Affairs, made the following

REPORT.

*The Committee on Indian Affairs, to whom was referred Senate bill No. 224, for the relief of the representatives of Joseph Watson, deceased, report:*

That they have examined all the evidence and documents in this case, and are of opinion that the bill should pass. The following report from the Committee on Indian Affairs, at the present session, in the Senate, presents most of the material facts involved in the case, and is adopted by your committee. The Senate committee say:

"The claim in question has been before Congress for many years, and reports for and against it have been made. That the services for which the claimant asks compensation were rendered, and sanctioned by the head of the Territorial government of Michigan, there can be no reasonable doubt; but, as these services were performed without any provision by law regulating the amount to be allowed for them, the difficulty appears to have been to ascertain their exact value. These services seem to have extended from the year 1806 up to 1812—making six years; during which Joseph Watson performed, when required to do so, the duties of superintendent and storekeeper, for which he received no fair remuneration. In view of the difficulty above referred to, your committee, being desirous to do justice between the government and the claimant, have deemed it proper to consider his claim with reference to an outstanding liability on his part as one of the securities of Henry Ashton, late marshal of the District of Columbia. It appears, from an extract from the docket of the Solicitor of the Treasury, No. 5, folio 200, (herewith filed, marked A A,) that at the November term, 1839, a verdict was rendered in the United States district court for the District of Columbia, in the case of James Williams, one of the six sureties of Henry Ashton, in favor of the United States, for \$8,279 25. It further appears, from a letter from the chief clerk of the office of the Solicitor of the Treasury, (also on file, marked B B,) that, in the year 1842, the representatives of Joseph Watson made an arrangement with the Secretary of the Treasury, by which his indebtedness to the United States as one of the sureties of Henry Ashton, deceased, late marshal of this District, was secured to the satisfaction



of the government, and that the debt so secured 'amounted to about \$1,375,' for which a deed of trust 'on real estate in this city was executed by them.' From a statement made to Mr. Baldwin, on behalf of the Committee of Claims of the United States Senate, (herewith filed, marked C C,) it appears, that of the appropriations made for the contingent expenses of the Territory of Michigan during the years 1806, 1807, 1808, 1809, 1810, 1811, and 1812, there remained in the treasury, on the 1st of January, 1813, a balance of \$1,050; and that no part of said appropriation appears 'to have been made on account of the Indian department or to *Joseph Watson*.'

"Taking into consideration the circumstances in which the liability on the part of Joseph Watson had its origin, and the fact, admitted on all sides, that the services for which compensation is at present demanded were actually rendered, but not paid for, while a balance of \$1,050 of the appropriations for the contingent expenses of the Territory of Michigan (nearly the amount of said liability) remained in the treasury, your committee think it just that the one should be regarded as an offset against the other. The indebtedness of Watson, for which the property of his representatives is held bound, originated in an act of kindness on his part, from which neither he nor his representatives have ever derived any benefit, and it would seem nothing more than equitable that his services, faithfully rendered, should be received in discharge of that indebtedness. If his appointment had been under a law of Congress, there could have been no difficulty in allowing his salary in discharge of the claim against him as surety of Henry Ashton. The honorable Lewis Cass, who succeeded at the end of the war of 1812 to the duties of superintendent of Indian affairs, has stated, in a letter on file among the papers, that the office which the petitioner held 'was essential to the public service; that the duties were ably and zealously performed;' and 'that it was impossible for the superintendent to discharge personally the various duties required of him by law; and, in point of fact, I have always understood that a large portion of them was discharged by Colonel Watson.' Such being the case, your committee have no hesitation in recommending, that, so far as any liability exists on the part of Watson or his representatives, the claim under consideration be allowed in discharge thereof, and that the property conveyed in trust shall be released from any claim on the part of the United States, for the benefit of his representatives, the present claimants. Your committee, therefore, respectfully recommend the passage of the accompanying bill."

The papers show that Watson during his lifetime, and his heirs since his death, have pressed this claim upon Congress and the Executive departments of the government, commencing in 1814 and continuing up to the present time. In 1828 the Indian Bureau, after a full examination of the claim, admitted the justice of all that part embracing services as secretary of the Indian department and storekeeper for the Territory of Michigan; but referred the claimant to Congress for his compensation, there being no appropriations subject to the control of the Indian department out of which payment could be made. The

claim was presented in 1830 and in 1831. In December of the latter year, it passed the Senate, but was not reached in the House; since which time it has been presented almost every session. Colonel Watson died some years since, and the claim is now in behalf of his representatives. Among the papers is an authenticated copy of the commission appointing Colonel Watson "secretary of the Indian department within the Territory of Michigan," by Governor Hull, governor of that Territory. A similar appointment was recognised in other Territories, and especially in the Territory of Orleans, and, at a subsequent period, in the Michigan Territory. Your committee are of opinion that these appointments by governors of the Territories of civil officers, except those of the highest grade, may have been construed to be authorized by the ordinance of the 13th July, 1787, confirmed by Congress after the adoption of the constitution, and continued in force until 5th February, 1825. But if Governor Hull even exceeded his powers in making the appointment, it is undeniable that Colonel Watson did serve the government as secretary of the Indian department, employed in granting licenses to traders, enforcing the intercourse act of 1802, and reporting its violators for punishment, for a period of six years—from 1806 till 1812. It is also equally undeniable, in the language of General Cass, (and no one could speak more advisedly than him,) in a communication addressed to the honorable James Barbour, Secretary of War, dated in 1827, "that the office itself was essential to the public service in Michigan, and that its duties were ably and zealously performed" by Colonel Watson. "It was impossible," says General Cass, "for the superintendent to discharge personally the various duties required of him by law, and, in point of fact, I have always understood that a large portion of them was performed by Colonel Watson. I should myself be utterly unable to fulfil such a task now without competent assistance." It is equally undeniable that subsequently a similar officer received for the same services the sum of \$600 per annum. This, it would seem, would entitle Colonel Watson's representatives to a gross sum of \$3,600; but they do not now ask Congress to make any such allowance. They only ask to be released from paying a judgment obtained against Colonel Watson by the United States, amounting to \$1,379 87; which judgment was obtained under the following circumstances: Henry Ashton was appointed marshal of the District of Columbia, and defaulted in the sum of \$8,279 25. His sureties were sued, and judgment recovered against them by the United States for that amount in 1840. Colonel Joseph Watson was one of his sureties. In 1842 Congress directed the Secretary of the Treasury to discharge each of the sureties on his paying or securing one-sixth each of the amount of the judgment; and the legal representatives of Colonel Watson executed a deed of trust on certain real estate in the city of Washington for the sum of \$1,379 87, and they now ask to be discharged from that liability, and the deed cancelled, by their relinquishing all further claim against the government arising out of the services of Colonel Watson as secretary of the Indian department and storekeeper in the Territory of Michigan.

Although Watson's claim is an old one, yet your committee believe

that the equity of the case demands that the United States should allow it so far as to discharge a security debt due them by the claimant; and they therefore recommend the passage of the Senate bill, with the following amendment:

In line 14, after "as" strike out "Indian agent," and insert *secretary of the Indian department and storekeeper.*

TARIFF.

[To accompany bill (of the minority) H. R. No. 403.]

JUNE 19, 1854

BBINS, from the minority of the Committee of Ways and Means,  
made the following

REPORT:

undersigned members of the Committee of Ways and Means, in conformity with the views of the majority of the committee as contained in the bill reported to the House entitled "A bill in alteration of the duty on imports, and for other purposes, approved July 1, 1846," beg leave to present a bill which the undersigned believe to be more responsive to the demands and more conducive to the general interests of the country in its several departments of industry and enterprise.

The general objections of the undersigned to the bill reported by the majority may be briefly stated, as follows:

The act of 1846 contains eight schedules or different rates of duty. The first schedule (nearly prohibitory) is of 100 per cent. and other articles in schedules of 40, 30, 25, 15, 10, and 5 per cent. Leaving spirits where they were placed by the tariff of 1846, the bill reported by the majority makes the next highest rate of 10 per cent., and, as this schedule embraces the principal duty-articles, the undersigned apprehend so great a reduction of duty will give an undue stimulus to the importation of such articles, while it will tend to the injury of American industry employed in the production of like articles, will have the effect to countervail the object of the bill, which is to reduce the revenue, and not to increase it. The like effect must be expected from reducing the duty on articles in the lower schedules, instead of making many of those articles free.

The tariff of 1846 contained, as has been observed, eight schedules or different rates of duty. The bill reported by the majority proposes to reduce to five; thus keeping up, against the lights of experience, the objections of the present law, and the evils which are known to flow from it—namely, uncertainty of classification, contrivances to evade the proper duty, injury to the fair importer, appeals from apparent, and litigation, with the expense, loss of time, and dissatisfaction which these controversies produce. All this evil is obviated by the simple expedient of a single rate of duty, falling upon articles of general consumption, and leaving free from duty raw material,

By abridging the free list, and subjecting the articles which the department had placed on it to the low rates of 5, 10, and 15 per cent. duty, two objects proper to be kept in view are wholly disregarded in the bill reported by the majority. First, the encouragement of American industry, by admitting the raw material free from duty where the duty is not wanted, which is deemed by the undersigned a matter of just and sound policy. The effect would be, to enable the American manufacturer to compete with his foreign rival as well in other countries as in his own, and, by such successful competition abroad, to add employment to our shipping interest both in the export of American manufactures and the importation of dutiable and other articles in return. And, second, so far as the duty is not needed on the articles in the said list, the undersigned consider it to be incumbent upon a free government to relieve the people from all custom-house impediments and restrictions, and the government from an increasing line of officers thereby rendered unnecessary.

The bill which the undersigned present as free from the objections, and as combining the advantages severally stated herein, is substantially the bill prepared by the Secretary of the Treasury, and recommended, with the reasons therefor, in his annual report on the finances at the commencement of the session. There are some modifications in the details of the bill of the department, but which do not interfere materially with its general scope and policy.

**JOHN ROBBINS, JR.**  
**WM. APPLETON.**

DON JUAN JESUS VIGIL.

[To accompany joint resolution H. R. No. 96.]

JUNE 21, 1854.

MR. BENTON, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the claim of Don Juan Jesus Vigil, for compensation for a quantity of sheep taken from him by a detachment of United States troops in January, 1847, in New Mexico, report:*

This claim is founded on a seizure by a detachment of United States troops, serving in New Mexico, in January, 1847, of a lot of sheep belonging to the claimant. It appears that the claimant, pursuing his lawful occupation, was engaged in removing a large lot of sheep from Red river to Moro creek, in New Mexico, where they were met by a detachment of United States troops, which had been detailed for that purpose by Lieutenant C. Oxley, of the second regiment of Missouri mounted volunteers, who seized the entire drove of sheep, made the herdsmen prisoners, and carried the whole into Las Vegas, where the herdsmen were detained, and the sheep dispersed, or converted to the subsistence of the troops, (about two hundred in number.) At the end of eleven days the herdsmen were liberated, and such portions of the sheep as could be found were restored to them; on recounting which, it appeared that there had been used by the troops, or were dispersed and lost in consequence of the seizure and conversion, upwards of four thousand head. The statements of the officers show that the seizure and capture were made in consequence of an erroneous suspicion that the sheep were intended for the supply of the enemy, then in a state of insurrection at Taos. But it is shown that, not only was the suspicion wrong as regarded the destination of the sheep, but that the owner of them had been constantly friendly to the United States, and particularly to Governor Brent and others, who had been massacred at Taos.

It is not according to the custom of modern warfare that private property shall be subject to seizure without compensation, and the United States recognised this principle in the late war with Mexico, even in those parts of the enemy's country that continued in arms after our troops had possession of them. The Territory of New Mexico was, however, peculiarly situated. It had been, from the commencement of the war, an object of the government to gain the good-will of the people here, and to avoid active warfare against them as far as possible. This

is shown in the instructions and despatches issued to General Kearny and other officers who commanded there, and who were directed to, and did in their proclamations, assure the inhabitants of the benevolent intent of our government towards them, and that it would respect both the persons and property of all who should not take up arms against the United States. It is believed that these promises, and the consequent general submission of the Territory to the United States, constituted an engagement on the part of our government to observe strictly towards those people the rule of non-spoliation of private property : a rule which it voluntarily observed in those parts of Mexico that were occupied by the commands of Generals Scott and Taylor.

*This claim was originally presented to the Secretary of War, who readily perceived and acknowledged its justice, but could not settle it for want of authority to do so, and an appropriation for that purpose. His letter is among the papers of the case.*

It is believed that under the circumstances the United States are justly bound to make compensation for the amount of the sheep thus seized or converted to their use, except so many as are shown to have been afterwards restored; and a resolution is herewith reported to that effect.

INDIAN APPROPRIATIONS.

[To accompany bill H. R. No. 46.]

JUNE 21, 1854.

STON, from the Committee of Ways and Means, made the following

R E P O R T .

*mittee of Ways and Means, to whom were referred the amendments Senate of the United States to the bill "making appropriations for rent and contingent expenses of the Indian department, and for g treaty stipulations with various Indian tribes, for the year ending 3, 1855," having had the same under consideration, beg leave to*

hey recommend that the House of Representatives concur in th, 5th, 6th, 8th, 11th, 12th, 13th 14th, 15th, 16th, 17th, 18th, h, 21st, 22d, 23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, , 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, h, 47th, 48th, 49th, 50th, 51st, 52d, 53d, 54th, 55th, 56th, 57th, h, 61st, 62d, 63d, 64th, 65th, 66th, 69th, 70th, 71st, 72d, 76th, h, 79th, 81st, 83d, and 84th amendments of the Senate.

hey recommend that the House of Representatives concur in nendment of the Senate, with an amendment: On page 2, strike the word "law," on 17th line, the following words: "*And pro- her*, That whenever the President may order the transfer of s of superintendent of Indian affairs from the governor of the of Minnesota, the salary of said governor shall thereafter be ve hundred dollars per annum."

hey recommend that the House of Representatives concur in mendment of the Senate, with an amendment: On page 2, fter the word "of," strike out the word "five," and insert in of *three*; and after the word "each," on line 27, strike out the even," and insert in lieu thereof *four*.

hey recommend that the House of Representatives concur in amendment of the Senate, with an amendment: On page 3, fter the word "thousand," strike out the word "five."

hey recommend that the House of Representatives concur in amendment of the Senate, with an amendment: On page 42, word "payment," on line 1014, insert the words *in full*.

hey recommend that the House of Representatives concur in amendment of the Senate, with an amendment: On page 45, strike out the words, "That no portion of this amount shall



be paid over to the present superintendent of Indian Affairs until he shall account, satisfactorily, for the amount already drawn by him out of former appropriations; and —" and on line 22, strike out the word "said."

That they recommend that the House of Representatives concur in the 80th amendment of the Senate, with an amendment: On page 50, after the word "authorized," line 2, strike out the words "by and with the assent of the Indian tribes respectively, to be obtained in due form," and insert in lieu thereof the words, *to enter into treaties with the various Indian tribes.*

That they recommend that the House of Representatives do not concur in the 7th, 10th, 67th, 73d, 74th, 75th, and 82d amendments of the Senate.

All of which is respectfully submitted.

RECEIVED  
JAN 10 1887  
U. S. DEPT. OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

EMIT DUTIES ON GOODS DESTROYED BY FIRE IN NEW  
YORK AND SAN FRANCISCO.

[To accompany bill H. R. No. 407.]

JUNE 23, 1854.



R. R. E. FENTON, from the Committee on Commerce, made the following

REPORT.

*The Committee on Commerce, to whom were referred the memorial of the Common Council and the resolutions of the Chamber of Commerce of the city of New York, also several memorials of merchants and other citizens of New York, Massachusetts, and Pennsylvania, asking for a return of duties on the goods in unbroken packages as imported, which were destroyed by the great fire in said city on the 19th day of July, 1845, report :*

That from the papers laid before the committee it appears that, in the great fire which occurred in the city of New York on the 19th of July, 1845, a large amount of property, both real and personal, was consumed—the most valuable part of the city. The whole loss, including buildings and fixtures, is estimated by the memorialists at \$6,000,000.

It is claimed that the duties which had been paid or secured to the government on the imported merchandise which was destroyed by said fire, amounted to \$600,000, and that the duties on the unbroken packages included in the above amount, which the owners, under the laws allowing drawback, would, upon the exportation of these packages, have been entitled to receive back from the government, amounted to about \$350,000. The government is asked to refund so much of the duties as shall, upon due proof, be shown to have been paid upon the unbroken packages so destroyed.

Our government, in regulating its system of collection of duties upon imports, has regarded the importer in the character of its agent, introducing and distributing over the country those articles of traffic, through the sale of which a revenue is derived by indirect taxation of the consumer. The importer first pays or secures the duties to the government, and then sells to the consumer or exports. In the latter case he is, by the laws allowing drawback, entitled to receive back from the treasury all the duties he has paid upon the goods so exported—less one-and-a-half per cent., which is retained by the government for its indemnity against expenses incurred respecting such goods.

This just principle of refunding duties paid upon goods thus withdrawn from the consumption of the country, the committee think should be applied to the present case.

The goods, the duties upon which are in question, were at the time of the conflagration in unbroken packages, and entitled, under existing laws,

if exported, to drawback. Besides, it is evident that this widespread calamity, by which many of our citizens were greatly crippled in their resources, and some ruined, rendered large importations necessary to supply in the market the place of the goods destroyed, so that unless the government refund the duties in question, it will adopt the policy, the justice of which is at least questionable, of retaining double duties upon the amount of goods which actually have gone into the consumption of the country.

The practice of refunding the duties paid upon goods lost to the importer by similar disasters, has long obtained both among the commercial nations of Europe and in our country. Annexed are ten certificates of respectable merchants, showing what the practice of the government in such cases is in England, France, and Russia.

Congress, in 1790, passed a law remitting to Thomas Jenkins & Co. the duties paid upon certain goods "which were lost by fire in the brig *Minerva* on her passage from New York to the city of Hudson, her port of delivery;" in 1794, a law remitting the duties paid by Elliott and Purviance on goods imported to Norfolk and Portsmouth, and "afterwards on the account of the same importers shipped to the port of Baltimore, and there destroyed by fire;" and in 1838, a law granting like relief to the sufferers by the great fire in New York in 1835.

It will be observed that the petitioners do not ask the refunding of the duties paid upon broken packages consumed—which duties, estimated to amount to \$250,000, will be retained by the government.

In view of these considerations, the committee report a bill for the relief of the petitioners, similar in its general provisions to the aforesaid law of 1838, not authorizing the payment of any money from the treasury, but the issuing of certificates to the amount of the duties remitted, and making those certificates receivable in payment of duties. The bill, in effect, allows a drawback upon the goods destroyed in unbroken packages, retaining two-and-a-half per cent. to indemnify the government for its charges and expenses.

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#### RUSSIA.

The subscribers, merchants of the city of Boston and its vicinity, have been in the habit of making shipments of various kinds of goods and merchandise to St. Petersburg, Russia; that some of us have had goods, sugars, &c., destroyed and damaged by water, fire, or otherwise; and in such cases, the *whole* duties have been remitted on the articles *wholly* destroyed, a *small* duty charged on the merchandise damaged, and a *lessened* duty charged on such as were saved from damage; and also certify, that it is the custom of the Russian government, as far as we know or are concerned, to remit all duties (on goods destroyed) to the importer, assignee, or to the party that would be *injured* by the exaction of duty: nor do we know of any nation in Europe that charges duty on goods or merchandise, *unless* the merchandise is consumed by the people.

WILLIAM SAVAGE,  
JAMES HARRIS,  
SAMUEL QUINCY,  
RICHARD SOULE,  
BENJAMIN RICH.

BOSTON, December 10, 1849.

LIVERPOOL, November 29, 1848.

We, the undersigned, merchants and brokers of the town of Liverpool, do hereby certify, that it is usual for the British government to remit the duties on goods of any description, destroyed by fire, or other casualties, on being petitioned to that effect by the proprietors, upon the principle that the goods so destroyed cannot be delivered for consumption.

Molyneux, Taylor & Co.; Baring Brothers & Co.; I. & H. Littledale & Co.; McCalmont, Sons & Co.; Glen, Anderson & Co.; Melly, Romilly & Co.; Chapman, Bowman & Co.; Gladston & Co.; Nicol, Duckworth & Co.; Rathbone Brothers & Co.; Fielden Brothers & Co.; Richardson Brothers & Co.; Phelps Brothers & Co.; Brown, Shipley & Co.

LONDON, November 29, 1848.

We, the undersigned, merchants of the city of London, hereby certify that in all cases where goods or merchandise are destroyed by fire or other accidents, it is the practice of the British government to release the owners of such goods from all bonds or payment of duties, upon the principle that goods so destroyed are not taken into consumption.

Baring Brothers; N. M. Rothschild & Son; Melhuish, Gray & Co.; Sandeman, Forster & Co.; Bell & Grant; Frederic, Huth & Co.; Maclean, Maris & Co.; Rawson, Norton & Co.; John Pickersgill & Son; Quarles, Harris & Sons; David Taylor & Sons.

In the above list of names there are some whose signatures I recognise, and who belong to some of the wealthiest and most respectable firms in London. U. S. Legation, London, 30th November, 1848.

GEO. BANCROFT.

## FRANCE.

The subscribers having been engaged in the importation of goods from France, and in the exportation of cotton and other products of the United States to France, do hereby certify that the French government does not levy duties on foreign merchandise, unless *consumed by its citizens*; that if such foreign merchandise as imported is consumed by fire or destroyed, the said duties, if paid, are returned by the government to the *importer, or to any party or parties* that would be damaged if the government retained such duties.

NEW YORK, October 19, 1850.

C. C. BECHET,  
V. BARSALOU,  
A. SEIGNETTE & Co.,  
CH. SAGORY,  
PILLOT & LE BARBIER,  
LE MOYNE & BELL,  
J. LAHENS & Co.,  
L. LORIET,  
CAZET & ASTOIN.

The undersigned, a merchant of the city of Boston, during his course of business, has been in the habit of making shipments to Russia, and that in the year 1834 he had a shipment of sugars destroyed and damaged by an inundation ; that the Russian government remitted the duties on the articles wholly damaged, and a lesser duty on such as were only partly damaged.

Boston, *December 12, 1849.*

ROB. G. SHAW.

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The undersigned, of Dorchester, in the State of Massachusetts, and formerly interested in the shipping interest between this country and Russia, has been in the habit of making shipments of various kinds of merchandise to St. Petersburg ; and that I am knowing to the Russian government making allowance and returning the duties on goods and merchandise destroyed and damaged by water, fire or otherwise, at some periods ; and I believe it is the custom of most of the European nations that charge duties on goods and merchandise, to remit the duties on such as are destroyed, and are not consumed by the people.

Boston, *December 17, 1849.*

JOHN D'WOLF.

THOMAS UNDERHILL—EXECUTOR OF.

[To accompany bill H. R. No. 408.]

JUNE 23, 1854.

R. CORWIN, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of Thomas Underhill, executor of Thomas Underhill, deceased, beg leave to report:*

That the facts stated in the petition are briefly these: that about the commencement of the revolutionary war, the testator leased a farm in Northampton county, Virginia, for a term of years, of a Mr. Hazewell, including the hands or slaves, horses, and farming utensils generally, for the sum of £553, Virginia currency. That in 1776, the 4th Virginia regiment were quartered on said farm, and took the entire possession, burned the fences, and prevented the slaves from labor in cultivating said farm. That the decedent remonstrated to the officers, and was informed by them that the troops must have quarters, and that the government would make compensation. That the testator was deprived of the use of said farm and slaves, and compelled to pay full rent, amounting in the whole to \$1,155. That the reason of his delay in making application is his ignorance of any remedy to which he was entitled.

The facts stated in the petition are substantially proven by the depositions of Thomas Cropper, William Kurcham, and Nathaniel Holland, old men, who lived near the place at the time the troops were quartered on the farm. The committee therefore report a bill for relief.



HENDERSON AND HEIRS OF ROBT. HENDERSON.

[To accompany bill H. R. No. 298.]

JUNE 23, 1854.

LYER, from the Committee on Private Land Claims, made the following

REPORT.

*Committee on Private Land Claims, to whom was referred House bill 98, "A bill to confirm the claim of Wm. H. Henderson and the heirs of Robert Henderson to five hundred acres of land in the Bastrop," have had the same under consideration, and report:*

they find a report on the subject-matter of this bill, which was made by Mr. Downs, then chairman of the Committee on Private Land Claims of the Senate, on the 8th February, 1853, which they would make a part of this report. The committee report back the bill and recommend its passage.

IN SENATE—FEBRUARY 8, 1853.

*Committee on Private Land Claims, to whom was referred the petition of Wm. H. Henderson and the heirs of Robert Henderson, deceased, have had the same under consideration, and report:*

the petitioners claimed five hundred acres of land in the Bastrop Parish, Louisiana, under the provisions of the act of the 3d of March, 1805, for the adjustment of land claims in said grants, and presented the same to the board of commissioners provided for by that act. It was recommended for confirmation, because it did not come strictly within the provisions of the act from which they derived their powers. It was one of the first class of claims in their report, and is submitted for further consideration of Congress in the following words: "But, under the principles of the law we are forced to report against it, justice requires that we should recommend it to the indulgence of the Government, the present claimants having purchased in good faith for a *bona fide* consideration;" and they might have added, "The evidence before the committee now shows, that they, and the persons under whom they claim, had remained in quiet and uninterrupted possession of it for seventeen years—only three years less than required by the said act of 1805. The fact that the chain of



title to them is not complete, is not material to the government; for the only question is, Ought it to be confirmed to the claimants, whoever they may be? The petitioners have had possession long enough to hold it by pre-emption against individuals, and the bill is so framed as to amount to a relinquishment of title only on the part of the government; so that, if any other claimants have a better title to it, it will not be prejudiced by this confirmation, but, on the contrary, it would inure to their benefit. The claims reported favorably on by said board have been confirmed by a bill which has passed the Senate; and this claim is one of those cases mentioned in the report of the committee in favor of that bill which were reserved for separate consideration. The committee therefore think the claim ought to be confirmed, and report a bill accordingly, and recommend its passage.

SYLVANUS CULVER.

[To accompany bill S. No. 297.]

JUNE 23, 1854.—Laid on the table, and ordered to be printed.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred Senate bill No. 297, for the relief of Sylvanus Culver, make the following report:*

That they cannot concur in the report of the Committee of the Senate on Private Land Claims as to many of the material facts in the case.

The committee are satisfied that one John Pearson was a private in the New York continental line, and that he was slain in battle by the enemy, and that, under the laws of the United States, his heirs are entitled to one hundred acres of land; that a warrant was issued for that number of acres to Samuel Pearson, in trust for himself and the other heirs of the said John Pearson.

In support of the petitioner's claim he has filed two affidavits, in which he states that he is the only surviving heir of John Pearson; that his mother was the sister of John Pearson; and in one of his affidavits he says that he has no brothers nor sisters, and *never had*, who were the children of his mother. In the other affidavit he swears that he had a sister, now long dead, Mrs. Benjamin, whose interest in said land he purchased. He further states that the land warrant is lost, and he asks that another warrant may be issued to him alone.

It is not stated what has become of Samuel Pearson and the other heirs of John Pearson. It is not stated that Samuel Pearson and the mother of the petitioner were the only heirs of John Pearson. The inference is very strong that there were other heirs, for the warrant was to Samuel Pearson, in trust for himself and the other *heirs*, (in the plural number.)

There is no evidence, except the statement of the petitioner, that he is related to John Pearson at all. There is no other evidence of his being the only surviving heir; in fact he does not positively state that he is—he only says he knows of no others.

The committee are of opinion that, besides the danger and impolicy of allowing claims upon the unsupported statements of the claimants, the proof in this case is altogether too vague and indefinite to admit of a favorable report.

The committee, therefore, return the bill to the House, and move that it do not pass.



EVERARD MEADE—LEGAL REPRESENTATIVES OF.

[To accompany bill H. R. No. 410.]

JUNE 23, 1854.

Mr. SHOWER, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom were referred the petition and papers of the heirs and legal representatives of Everard Meade, deceased, have had the same under consideration, and ask leave to report:*

That heretofore, when this claim was before Congress, there was no satisfactory evidence that Everard Meade held an office of higher grade than that of captain during the revolutionary war, and therefore an act was passed allowing his heirs five years' full pay as a captain, which sum has been duly paid.

Additional proof is now produced (see the letter from the Department of State, dated March 3, 1854, and filed in this case) which satisfies the committee that the said Everard Meade was promoted to the rank of aid to Major General Lincoln, on the 7th day of May, 1777, and in that grade he continued to serve to the end of the war, (there being no evidence that he either resigned his commission or that he was dismissed from the service,) and that the petitioners are entitled to receive such additional sum as will be equal to five years' full pay of an aid; and for the relief to this extent they report a bill.

DEPARTMENT OF STATE,  
Washington, March 3, 1854.

SIR: It appears, from an examination of the revolutionary records on file in this department, that Everard Meade was appointed aid to Major General Lincoln, on the 7th day of May, 1777; but it does not appear how long he served in that capacity, nor is his name found on any roll of the supernumeraries.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

HON. JACOB SHOWER,  
of the House of Representatives.



LARKIN SMITH—HEIRS OF.

[To accompany bill H. R. No. 411.]

JUNE 10, 1854.

Mr. VAIL, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Larkin Smith, report:*

That they have examined the evidence filed in support thereof, and, concurring in the report on said case made February 21, 1850, which is made part of this, report a bill for the payment of said claim.

FEBRUARY 21, 1850.

*The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Larkin Smith, asking to be allowed the commutation pay due to said Smith as a captain of cavalry in the army of the Revolution, report:*

That they have examined with care the evidence produced in support of this claim, and have come to the conclusion that the prayer of the petitioner ought to be granted. The case has been before former committees, and reported on favorably; one of which reports, as it refers particularly to the evidence, the committee adopt and submit herewith. The committee think that Captain Larkin Smith was in his lifetime entitled to commutation of five years' full, in lieu of half-pay for life, and that the right to it now belongs to his legal representatives, and report a bill accordingly.

MARCH 13, 1838.

*The Committee on Revolutionary Claims, to whom the memorial of the heirs of Larkin Smith was referred, report:*

That the memorialists claim the commutation pay due to the said Larkin Smith, for his services as a captain of cavalry in the army of

the United States, to the end of the war of the Revolution; and, in support of the claim, the following evidence, record and parol, is exhibited and relied on. The record or documentary evidence shows that, as early as November, 1775, Larkin Smith was a private soldier in a Virginia minute company, commanded by Captain Oliver Towles, (see original muster-roll of that date, signed Oliver Towles, captain;) that in 1776 he is recognised, first as a cadet and then as ensign, in the company commanded by Captain Oliver Towles, and attached to the sixth battalion of Virginia forces on continental establishment, (see certificate of Auditor Heath, for pay as cadet, and the pay as ensign on the pay and muster roll of the company of Oliver Towles, signed Oliver Towles, captain sixth battalion of Virginia forces.) It is further shown that pay was allowed to Larkin as captain of cavalry in the continental service to the 25th of November, 1782, and that a certificate for his two years' advanced pay was issued to him, in pursuance of an act of the Virginia Assembly directing that pay be allowed to such officers as have been in service prior to May, 1777, and still belong to the line of the army. (For both these payments, see the certificates of Auditor Heath, and the act of the Virginia Assembly of November, 1781.) It also appears that the additional land bounty, promised by Virginia to officers who served over six years and to the end of the war, has been allowed to Larkin Smith. (See journal of the executive council of Virginia, and certificate of the register of the Virginia land-office.) The parol evidence of several respectable individuals, who each and all knew Larkin Smith intimately during the whole war and for many years thereafter, represents that Larkin Smith was a highly patriotic and gallant officer; that he entered the military service at the commencement of the war of the Revolution, and continued in active service till late in the year 1782, about which time, the war being near its close and no active operations going on, many officers became supernumerary and retired on leave. Upon the foregoing evidence of service, Larkin Smith would, according to the uniform decisions of Congress in analogous cases, be entitled to the commutation pay claimed, unless there was evidence to show, or sufficient reason to presume, (as the Third Auditor does,) that Larkin Smith died or resigned subsequent to the 26th of November, 1782, and before the 23d of November, 1783. In either of these events, his claim to commutation would have abated. The presumption of death is certainly erroneous, as Larkin Smith lived many years after the war closed; nor does the presumption that he resigned seem to be at all probable. None of the army records show that he resigned, and there is abundant record evidence of the resignation of many other officers. To presume that Larkin Smith resigned, under the foregoing circumstances, would reverse all the decisions of Congress in similar cases. The committee, therefore, report a bill providing for an allowance of the commutation claimed.

**33d CONGRESS,**  
**1st Session.**

**Rep. No. 208.**

**HO. OF REPS**

**WILLIS WILSON—HEIRS OF.**

**JUNE 27, 1854.**

**This report was, by unanimous consent of the House, withdrawn, and  
e committed to the Committee on Revolutionary Claims, together with  
he bill and accompanying papers.**





HENRY GARDNER AND OTHERS.

[To accompany bill H. R. No. 413.]

JUNE 23, 1854.

Mr. MAY, from the Committee on the Judiciary, made the following  
REPORT.

*The Committee on the Judiciary, to whom was referred the memorial of Henry Gardner and others, directors of an association called the New England Mississippi Land Company, report:*

That they have carefully investigated the merits of the claim set forth in said memorial and supported by a voluminous mass of proofs. They find that this claim has been for a long time before Congress, and that various and conflicting reports had been made upon the subject; some twenty-four reports have been made in the two Houses of Congress, and all but two in its favor, and the claim has been twice considered by the Senate. These reports have fully exhausted every inquiry of fact and law belonging to the merits of this claim.

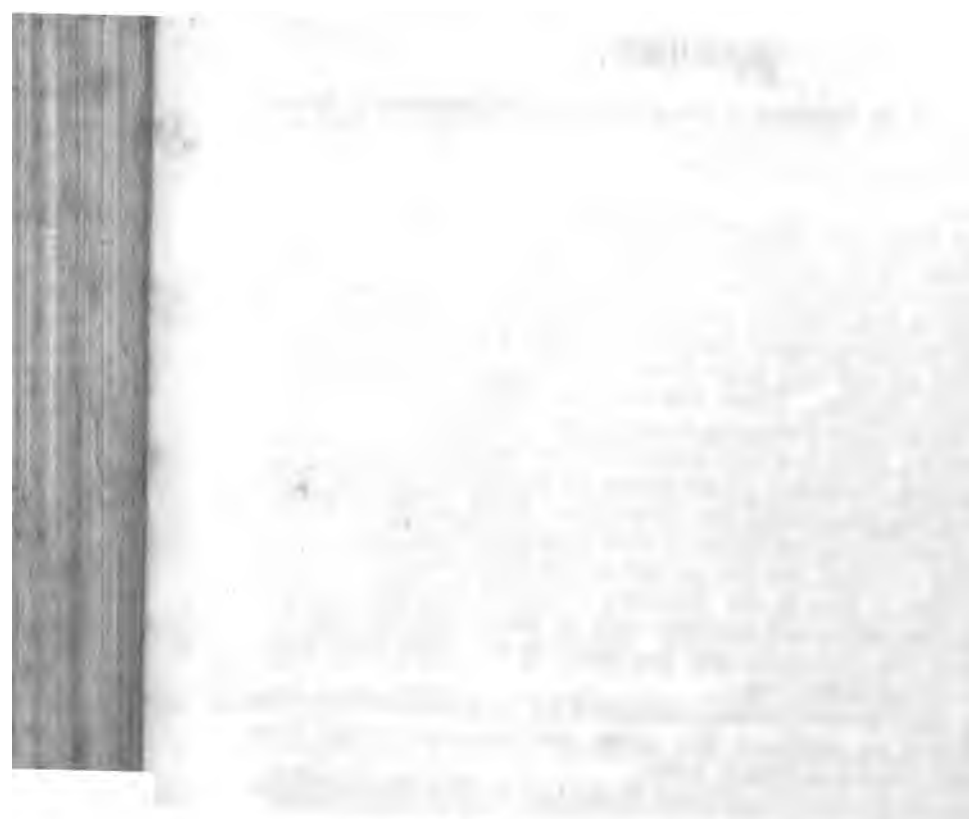
The views set forth in a very comprehensive and able report, made by the Judiciary committee of the Senate on the 22d of March, 1854, have received the approval of this committee. They are fully satisfied that this is a just claim, and ought to have been paid long ago.

The money received for the interest of the claimants in the land sold by them is now in the Treasury of the United States. The Government has derived an immense sum of money through the title sold to it by the claimants, and they have by the same transaction suffered a corresponding loss.

But for a clear mistake in law, committed by the commissioners who were appointed to adjudicate this claim, the claimants would have received their money in March, 1816.

The Supreme Court of the United States has decided that such mistake was committed, and the two surviving commissioners (one being dead) have admitted it. The claimants simply ask that the amount owing to them through this mistake, and which is now in the Treasury, may be paid to them, without interest or damages.

The public faith in the opinion of this committee requires that this should at once be done, and they herewith report a bill to accomplish it.



GEORGE MATTINGLY.

[To accompany bill H. R. No. 414.]

JUNE 23, 1854.

Mr. MAY, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom was referred the memorial of George Mattingly, report:*

That it appears, by the evidence presented by the claimant, that on the 4th day of December, 1840, he purchased at a public tax sale, in the city of Washington, made in pursuance of law, by the collector of taxes, a square of ground marked on the plat of said city as square No. 95, and paid therefor the sum of \$387 11, and received from the mayor of said city on the 26th of July, 1846, a deed for the same; that he has, since acquiring said title, expended in improvements on said square the sum of \$12,750.

The said square was, it appears, erroneously assessed on the books of the city of Washington as the property of an individual who was a large land-owner in that neighborhood. That a large arrears of taxes were due on the same and unpaid, and according to law it was offered for sale to pay the said taxes, and after due publication by repeated advertisements, was on several occasions offered for sale, when no one would bid for it, the said square being then quite remote from the improved and improving parts of Washington. At length, after these failures to sell, the claimant was persuaded to bid for the same, and no one else being willing to purchase it, it was sold to him at a price equal to the taxes due upon it.

It now turns out that the title to said square is in the United States. The claimant has discovered this, and he gives the information which thus destroys his own title. He asks that a deed may be made to him by the government of its title, upon his paying the value of the square at the time he purchased it into the Treasury, with interest thereon. The committee have no doubt that the claimant has acted in good faith in this transaction; they believe he paid to the city full market value of the square, and conceive that his request, with the condition of making the payment over again to the government with interest, is just and ought to be allowed.

It would be an act of extreme hardship to turn him out of his possession and title, thus honestly acquired, and attended with such an investment of his money in fine substantial improvements, which have tended to lead other improvements towards that part of the metropolis, which is

now becoming well built up and settled. The committee will add that this square has not been reserved or appropriated for any public use whatever, and the legislation of Congress has established the policy of selling the lots and squares belonging to the government, in order that the progress and improvement of the city may be promoted.

They therefore report a bill for the relief of the memorialist.

RICHARD TAYLOR—ADMINISTRATOR OF.

[To accompany bill H. R. No. 415.]

JUNE 23, 1854.

W. SHOWER, from the Committee on Revolutionary Claims, made the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of Nathaniel Riddick, administrator de bonis non of Richard Taylor, deceased, having had the same under consideration, report :*

That it appears, by the paper marked "No. 4," and filed in the case, that on the ninth day of March, one thousand eight hundred and forty-six, Nathaniel Riddick was appointed administrator *de bonis non* of Richard Taylor, deceased, an officer in the army of the United States, in the war of the Revolution, by the court of quarterly session, held for the county of James City, Virginia, and that he bonded as such.

That the petitioner, as administrator as aforesaid, claims commutation pay due the said Richard Taylor for services in said war. That from evidence derived from the Department of State, and also filed in this case, and marked "Department of State," it does appear, "that Richard Taylor was a second lieutenant in the sixth regiment of the Virginia line on the 1st day of November, 1776, and that he served to the close of the war, at which period he held the rank of lieutenant colonel;" and that though the petitioner prays for the pay of a captain only, so conclusively is the fact established that the said Richard Taylor was an officer of much higher grade, and consequently was entitled to corresponding pay, the committee report a bill, allowing the pay to which he was entitled by the rank he held at the close of the war.



JOHN McVEA AND JOHN F. McKNEELY.

[To accompany bill H. R. No. 416.]

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JUNE 23, 1854.

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r. HUGHES, from the Committee on Private Land Claims, made the following

REPORT.

*Committee on Private Land Claims, to whom was referred the memorial John McVea and John F. McKneely, submit the following report :*

appears from the memorial, and affidavit accompanying it, that mas Scott, the father-in-law of the memorialists, verbally conveyed in 1829 or 1830, with John McVea, sr., for about one thousand s of land in the parish of East Feliciana, and State of Louisiana. John McVea, sr., represented himself as authorized to sell the as agent of one Corcoran, the supposed owner thereof, then residing in the city of New Orleans. Scott was to have title as soon as said agent should obtain adequate authority from the reputed owner make the conveyance. In 1830, Scott took possession of the land, made considerable improvements thereon. Soon after the said al agreement was made, the agent of the reputed owner died, and conveyance to Scott was ever executed. Scott entered upon the under the belief that he should ultimately obtain title thereto. r Scott had been in possession for some years, he made a donation ie land to the memorialists. About fifteen years ago, the memost, McVea, entered into possession of the land; and about five years eafter, McKneely, the other memorialist, joined him in the occupand they have continued to occupy it to the present time. The meialists have made extensive and valuable improvements on the , and have erected thereon a sugar-house, machinery, &c., valued fteen thousand dollars. They have had under enclosure, for ten s, about one thousand acres.

he reputed owner of the land died soon after his agent, and it s out that the land belonged to the United States. The public s in that vicinity, embracing the premises in question, have been eyed, but the premises in question have been withheld from sale rder that the claim of the memorialists may be adjusted.

he memorialists set forth that under the survey, some fragments of rter-sections fell outside of the enclosures of the memorialists, and upon such fragments persons have been disposed to make settlets, in hopes of ultimately holding the greater portion of quarterions within the memorialists' enclosures. The memorialists pray



for the passage of a law allowing them to purchase the land enclosed by them, not exceeding one thousand acres, at a dollar and a quarter an acre.

Your committee have come to the conclusion that the memorialists are equitably entitled to relief.

Some difficulty may arise in entering the lots as surveyed, so as to correspond with the enclosure of the memorialists. The committee have therefore followed the recommendation of the Commissioner of the General Land Office in framing the bill for the relief of the memorialists, by requiring the entry to be made as near as may be on the smallest legal subdivisions of the public surveys, and with a provision that the entries shall not be to the prejudice of any valid adverse rights.

WILLIAM CURRAN.

[To accompany bill H. R. No. 417.]

JUNE 23, 1854.

Mr. HUGHES, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom were referred the petition and papers of William Curran, report:*

That it appears by the petition and papers of said Curran, duly verified in the case, that on the 7th day of February, 1851, a bounty land warrant of that date was duly issued, under the act of Congress of September 28, 1850, to one Thomas Myers, who was a private and a corporal in Captain Skinner's company, Colonel Mills's regiment of the New York volunteers, in the war of 1812, for 160 acres of land, which warrant was number 407. That on the 25th of April, 1851, and before the passage of the act of Congress making land warrants assignable, the said Thomas Myers sold said land warrant to the petitioner for two hundred dollars, which was duly paid; and thereupon the said Myers duly executed, under his hand and seal, and delivered to said petitioner, an assignment of said warrant, bearing date the 25th of April, 1851—that being the day of its execution—with a power and authority contained in said assignment to said petitioner to locate said warrant on any public lands, according to law, in the name of said Thomas Myers; and said assignment also contained an agreement on the part of said Myers that he would convey to said petitioner, by deed, the lands on which said warrant should be located, upon their being patented to him, said Myers. That after said assignment, and about the time of the passage of the act of Congress making land warrants assignable, which was the 22d of March, 1852, the said Thomas Myers died intestate, leaving no estate, or, at most, but very little, and that no letters of administration have ever been granted in his case.

The petitioner is a citizen of the town of Boston, in the county of Erie, and State of New York, and Mr. Myers was a citizen of the neighboring county of Cattaraugus, in said State.

The petitioner presents to the committee the original land warrant to Myers, and also the assignment of Myers to him, duly executed and properly acknowledged on the day of its date, as appears by the certificate of the proper officer authorized to take the proof and acknowledgment of the execution of papers according to law.

The papers are all in due form, and the petitioner's case is fully established to the entire satisfaction of the committee.

The reason of the application to Congress for relief is, that although the first section of the act above referred to, making land warrants assignable, (vol. 10 Statutes at Large, page 3,) declares "*that all warrants for military bounty lands which have been or may hereafter be issued under any law of the United States, shall be assignable by deed or instrument in writing;*" yet, by the same section, the deed or instrument in writing by which said assignments are made, must be *made and executed after said act took effect*; and inasmuch as said assignment to the petitioner was before the act took effect, it is not within the act, and the subsequent death of Myers rendered it very inconvenient, if not quite impossible, for the petitioner to procure a proper assignment, or a conveyance of the land to him, on which he might locate said warrant.

Under these circumstances he asks Congress to confirm the assignment so made, as above mentioned. The transaction was a fair one. The petitioner paid, and said Myers received, full price and value for the warrant; and the committee think it equitable and just that the petitioner should have the relief he prays for, and they therefore report herewith a bill for that purpose, and recommend its passage. All of which is respectfully submitted.

ENOCH S. MORE.

[To accompany bill H. R. No. 418.]

JUNE 23, 1854.

MR. HILLYER, from the Committee on Private Land Claims, made the following

## REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of Enoch S. More, praying for relief on account of an error in the muster-roll of the regiment in which he performed military duty, make the following report:*

The testimony submitted to the committee, in this case, shows most clearly, and beyond all question, that Enoch S. More, the petitioner, entered the service of the United States as a volunteer in the war of 1812. After remaining in the service about two months, he was sent home on account of extreme ill health; and, in his furlough of absence, signed by Colonel Philetus Swift and Captain Abraham Matteson, being the colonel of the regiment and captain of the company to which he belonged, he was committed to the charge of Drs. Fitch and Sheldon, *as a sick soldier*. His disease was an affection of the liver, of a most formidable character, requiring in its course a severe and dangerous surgical operation, which was performed by Dr. Sheldon. From the effects of this sickness the petitioner has never recovered. He was never able to rejoin the army. Notwithstanding the existence of these facts, he was, by some mistake, returned on the muster-roll to December 31, 1812, "deserted."

It further appears that in June, 1850, the petitioner applied under our pension laws for an invalid pension, and, upon exhibiting to the Commissioner of Pensions the same proof which has been exhibited to the committee, his application was granted, and he received his certificate.

It further appears that in 1853 the petitioner applied for a bounty of land on account of his services in the war of 1812, which was rejected, on the ground that the law granting bounties of land to the soldiers of the United States declared that no soldier could be entitled to a bounty when the *muster-roll* showed that he had deserted.

The laws make no provision for controverting the muster-rolls, and the committee are satisfied that in this case there is an error in the roll which does a great injury to the petitioner. The error not only deprives him of his claim upon the liberality and justice of his country, but it

also fatally affects his reputation and stamps a degrading stigma upon his family. It is not sufficient that Congress should grant the land which the petitioner claims; it ought to go further, and order the error in the muster-roll to be corrected, and thereby do justice to his reputation, and relieve him and his posterity from an odious imputation.

The committee have instructed me to report for his relief the accompanying bill.

PATRICK GASS.

[To accompany bill H. R. No. 419.]

JUNE 23, 1854.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of Patrick Gass, report :*

That the petitioner asks an appropriation of three hundred and twenty acres of land, to be located by him anywhere on the public domain of the United States, where the same could be located by any one entitled to bounty land. This is the amount of land granted by government to the actual settlers in Oregon, and the petitioner predicates the equity of his claim to this bounty on the just and reasonable ground that he was one of the original explorators of that distant country ; that his bravery, zeal and devotion aided materially in the discovery of the Oregon river and its principal tributaries, under Lewis and Clark.

The petitioner entered the service of his country in 1799, remained in its military service till 1803, when he volunteered in the service of Lewis and Clark, and served faithfully throughout their long and perilous journey.

In 1812 he enlisted in the army of the United States, under General Bissell, and served with fidelity to the end of the war, losing an eye at the battle of Lundy's Lane.

The government is now giving to the actual settlers in Oregon three hundred and twenty acres of land. The donation of this quantity of land to actual settlers is a ready means to induce population, and convert the wilderness into blooming and cultivated States; and while the committee, under the circumstances and position of the Oregon Territory, readily recognise the propriety and justness of such an application of the lands in that distant and unprotected quarter, they also think that something may be due for the remnant of that small band who accompanied Lewis and Clark in their long, perilous and laborious expedition. This expedition was undertaken under the direction of government; the officers and the men were under its command; their toilsome services were for the benefit of the country at large, and their discoveries constitute perhaps the true and legitimate basis, next to proximity, of our title to that country. The petitioner not only fought in defence of his country, but his labors contributed to the extension of its borders

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ROSALIE CAXILLO.

[To accompany bill H. R. No. 420.]

JUNE 23, 1854.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of Rosalie Caxillo, make the following report:*

That the said Rosalie Caxillo is the widow of the late José Caxillo, who purchased one of the old Spanish claims in the State of Mississippi. Being an ignorant man, and not understanding our language or his rights under our laws, he failed to appear before the commissioners, to have his title to his land confirmed according to the laws of Congress. That after he had remained in possession of his land a great many years, a great portion of the same was entered by other persons, and sold by the government to them, and thus lost to the said José. That the Congress of the United States, in the year 1846, passed an act for the relief of José Caxillo, and gave him the northwest quarter of section 5, township 9, range 16, in lieu of the land which had been thus entered by other persons.

It further appears, that when the land granted to Caxillo came to be run out and set apart to him for his indemnity, it was found to lie almost entirely in and upon an irreclaimable bog, which was of no value whatever; and the said José Caxillo in his lifetime, and his widow Rosalie Caxillo since his death, can make no use of it whatever.

The petitioner asks that she, on behalf of herself and her children, may be permitted to relinquish to the United States the land so granted to them by the act of Congress in 1846, and that she and her children may receive, in lieu thereof, an equal amount of land elsewhere in said land district.

The committee believing that her claim is founded in justice and equity, report a bill for her relief.



and have it ready for delivery, and the purchaser, instead of calling for the deed in any reasonable time, should wait *fourteen years*, and then call for his deed, whereupon he should learn that the lot he really contracted for, and which had been patented to him many years before, had been sold for taxes, and thus lost to both parties; would a court of equity order a restitution of the purchase money and interest? The committee think not. The purchaser should have called for his patent before, and this would have informed him (even though he had forgotten the number of the lot he applied for) of the number and description of the lot he had actually purchased. There is no rule better settled than that whoever would be relieved in any court, should show that he himself has not been guilty of *laches*. He should not allow such a length of time to run by as shall not enable him to place the party against whom relief is sought in as favorable a condition as he would have been in had relief been sought in due season. But in this case the petitioner has waited until the land which he actually purchased has been sold for taxes. Had he called for his patent in season, his mistake would have been corrected, and a sale of the land for taxes prevented. Besides, the *receiving* of a receipt by the *petitioner* for the *wrong* lot was quite as much an act of negligence, as the *execution* of the receipt for the *wrong* lot was an act of negligence by the *receiver*. *Mutual* negligence affords no ground for relief in favor of either party.

The committee, therefore, have come to the conclusion that the prayer of the petitioner ought not to be granted.

A. S. LAUGHERY.

[To accompany bill H. R. No. 421.]

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JUNE 23, 1854.

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Mr. HILLYER, from the Committee on Private Land Claims, made the following

## REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of A. S. Laughery, report:*

That the petitioner, A. S. Laughery, was, according to *his own showing*, a clerk in the commissary department of the United States army, throughout the Mexican war; that, as such, he rendered arduous duties; and that, being with the army in an enemy's country, he was often induced to perform arduous and hazardous military service. The committee would feel no hesitation in granting the relief asked for if the facts stated in the petition were substantiated by proof. But inasmuch as the services alleged to have been performed were of so public and notorious a character, that it cannot be presumed that any one would falsely pretend to have rendered them, and as the facts upon which all other persons are by law authorized to receive land warrants for military services are submitted to and tried by the Commissioner of Pensions, the committee report a bill authorizing and requiring the Commissioner of Pensions to issue to the petitioner a land warrant for such an amount of land as he may be entitled to, according to the time he served, upon the petitioner making before the said Commissioner of Pensions satisfactory proof that he did serve in the late war with Mexico and in Mexico, in the capacity of clerk in the commissary department.



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CONRAD WHEAT, JR., OR HIS LEGAL REPRESENTATIVES.

[To accompany bill H. R. No. 422.]

JUNE 23, 1854.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of Matthew Rippey, praying that a patent may be granted to Conrad Wheat, jr., or his legal representatives, for 640 acres of land according to the plot of survey under the New Madrid location certificate of said Wheat, have had the same under consideration, and submit the following report:*

It appears that Conrad Wheat, jr., in February, 1806, filed his claim to 900 arpents of land, "French measure," before the commissioners appointed to ascertain and adjust the titles and claims to lands lying within the Territory of Orleans and district of Louisiana.

The said commissioners confirmed on the 20th June, 1811, 450 arpents of land to said Wheat, (see American State Papers, vol. 2, page 595,) and ordered the survey to be made so as to include his improvements.

By the 4th section of "An act allowing further time for delivering the evidence in support of claims to land in the Territory of Missouri, and for regulating the donation grants therein," approved March 3, 1813, it is provided, "That every person whose claim to a donation of a tract of land in said district has been confirmed by the board of commissioners appointed for ascertaining the rights of persons claiming lands in said district, and is embraced in their report transmitted to the Secretary of the Treasury, or which has been confirmed by the recorder of land titles, under the third section of the act entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,' approved June 13, 1812, shall be entitled to a grant for six hundred and forty acres, notwithstanding a less quantity shall have been allowed to him by the decision of the said commissioners or recorder of land titles: *Provided*, That in no case shall the grant be for more land than was claimed by the party, in his notice of claim, nor for more land than is contained within the acknowledged and ascertained boundaries of the tract claimed." The fifth section of the said act provides for the survey of 640 acres of land to each claimant that comes within the provisions of section four, and upon the return of such survey the recorder of land titles was required to issue a certificate to the claimant, which certificate was to be transmitted to the Commis-

sioner of the General Land Office, and if satisfactory to said commissioner a patent was to be issued therefor.

It further appears that the deputy surveyor general did not survey 640 acres of land for the benefit of the said Conrad Wheat, jr., although he was entitled to the same under the said 4th section, he having originally claimed 900 arpents, and but 450 arpents having been confirmed by the commissioners.

On the 17th of February, 1815, an act was passed for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes, under which said act Conrad Wheat, jr., made application to the recorder of land titles for a certificate to locate other lands in lieu of his said lands so injured by earthquakes, and on the 12th day of August, 1816, the said recorder of land titles issued to said Wheat a certificate of new location for 640 acres, which certificate in October, 1816, was located upon certain lands, described as follows: Beginning at the corner to sections 13 and 24, township No. 44 north, of the base line, and range No. 5 east, of the 5th principal meridian, running thence north, 83° east, 160 poles; thence north, 7° west, 320 poles; thence south 83° west, 320 poles; thence south, 7° east, 320 poles; thence north, 83° east, 160 poles to the beginning; and in May, 1818, the said lands were surveyed and described therein as survey No. 2453, in township 44 north, of ranges 5 and 6 east, of the 5th principal meridian, Missouri.

The said survey, with a plot thereof, was forwarded to the Commissioner of the General Land Office, for the issuing of a patent, but the said Commissioner decided that, as the said certificate of location issued under the act approved February 17, 1815, was for a greater quantity of land than was confirmed by the commissioners, or was then legally owned by the said Wheat, he could not issue a patent for the excess.

The said Commissioner, in a letter dated 23d July, 1849, makes use of the following language: "As at present advised, then, I have not been able to satisfy myself that the Commissioner has clearly the legal ability to issue the patent in this case, which under other circumstances it would afford me pleasure to do, because I have no doubt it is one entitled to the most favorable and liberal consideration, not only in view of the antiquity of the location, but from the general policy of Congress in such matters, and the facts which you have already communicated in regard to it."

The present Commissioner of the General Land Office also recommends that the prayer of the petitioner be granted.

The committee, in view of the facts in this case, are of opinion that said Conrad Wheat, jr., is justly and equitably, if not legally, entitled to the said lands; they therefore report the accompanying bill, and commend its passage.

WILLIAM J. McELHINEY, E. P. MATHEWS, AND LAW-  
RENCE CRIBBEN.

[To accompany bill H. R. No. 423.]

JUNE 23, 1854.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of William J. McElhiney, E. P. Mathews, and Lawrence Cribben, report:*

That it appears that each of the petitioners has possessed and cultivated for several years a small fraction of land, part of the southeast fractional quarter of section ten, township 46, range 4 east, lying in the county of St. Charles, Missouri. It further appears that the petitioners derived their possession from one Joseph Aubrey; that said Aubrey entered upon, cultivated, and improved a part of said land, more than twenty years ago, for the purpose of securing a pre-emption right thereon; and that said Aubrey and those claiming under him have had continued and uninterrupted possession of the same until the present time. Your committee further report, that it appears that there is no one asserting an adverse claim to the land possessed by the petitioners, and that said land could not be entered heretofore, as is represented, because the boundary line of the St. Charles commons had not until recently been settled. Your committee, therefore, think that the petitioners are entitled to relief, and should be allowed to enter the small fractions held by each, respectively, at the minimum price of government land, and accordingly report a bill.



INHABITANTS OF WARREN COUNTY, MISSOURI.

[To accompany bill H. R. No. 424.]

JUNE 23, 1854.

NICHOLS, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of forty citizens of Congressional township 45, of range 1 west, in Warren county, Missouri, have had the same under consideration, and report :*

That it appears that in the year 1800 a concession of 600 arpents of land, situated in the St. Charles division on the river Tuque, was made by C. D. Delassus, the lieutenant governor of Upper Louisiana, to Andrew Kinaird, and that the same was transferred by Kinaird to one John Long, and subsequently by Long to James Macky. In the year 1810 those claiming under Kinaird are represented to have taken possession of the land embraced in the concession by Delassus, and have made valuable and lasting improvements upon the same. It also appears that the title to said 600 arpents was confirmed by the act of Congress of 4th July, 1836, confirming certain land titles in the State of Missouri. It also appears that, upon the surveys of the land within the State of Missouri by the United States officers, one-half of the sixteenth section, which was granted by act of Congress for the use of schools, was located by the survey upon or covered a part of said concession. That of the other half of said section only one hundred and twenty acres have been sold at one dollar and a quarter per acre; and that the only valuable part of said section is embraced within the confirmation aforesaid.

The petition is signed by forty-eight inhabitants of said township, and the commissioner, directors, and clerk of said school township 45, of range 1 west, certify that the signers constitute a majority of that township. The committee do not deem it material to inquire whether the title under the act of Congress granting the sixteenth section for school purposes, or that under the act of July 1836, confirming the title under the concession by Delassus; and as they believe the government will not be prejudiced by granting the prayer of the petitioners, that the title under its act of confirmation will be quieted, and the school land probably increased; the committee think the prayer of the petitioners for the location of a half section, in lieu of that embraced in the confirmation, upon any of the public lands within that land district, ought to be granted, and herewith report a bill.





SIMEON BUCKNER—WIDOW OF.

JUNE 23, 1854.—Laid on the table, and ordered to be printed.

Mr. MAXWELL, from the Committee on Indian Affairs, made the following

REPORT.

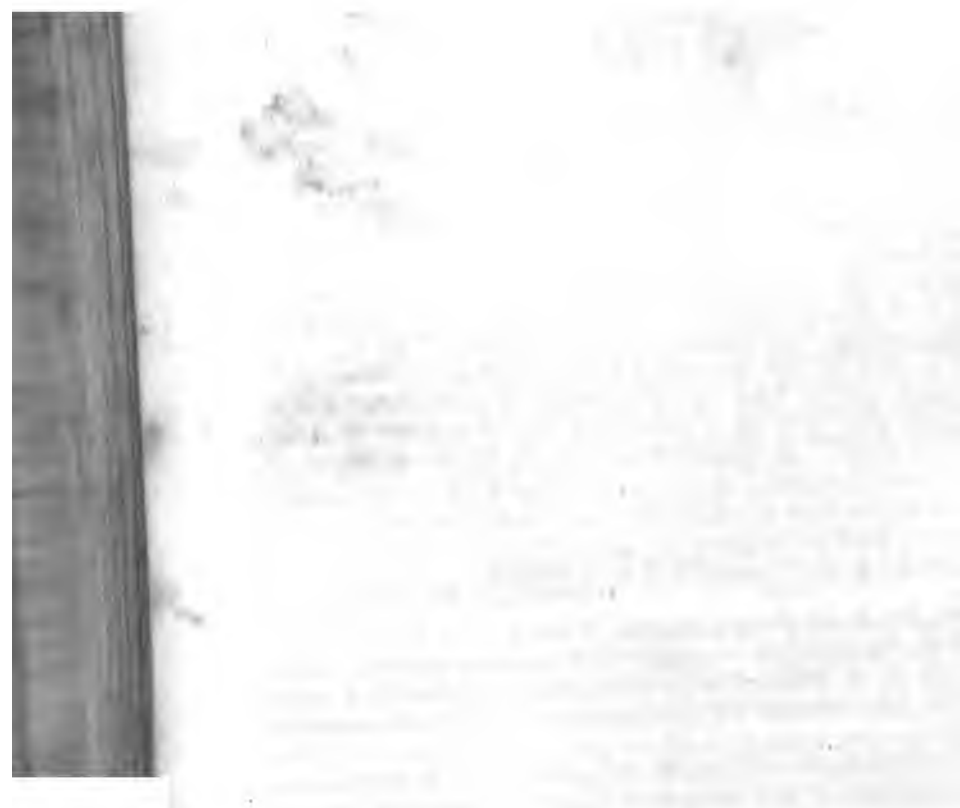
*The Committee on Indian Affairs, to whom was submitted the memorial of the widow of Simeon Buckner, beg leave to submit the following report :*

In 1837, Simeon Buckner contracted with the government for the removal of Chickasaw Indians from Memphis, Tennessee, to Fort Coffee, by steamboats.

By the terms of the contract, Buckner was to furnish such number of boats, in good order, as would be sufficient for that purpose. The steamboat Kentuckian and some four or five other boats left Memphis, with a large portion of the emigrating Indians on board.

In consequence of the blowing up of a boat at Memphis about the time the Indians were to leave, a number of their people refused to go on board of the boats, and persisted in going by land. All the boats left. The steamer Kentuckian made a trip to Fort Coffee, and returned to Little Rock with a view of taking on board the Indians, who had left Memphis with a view to emigrate by land. On the arrival of the Indians at Little Rock, they persisted in their refusal to go on board any boat.

The claimant now asks compensation, at the rate of \$100 per day, for the time the Kentuckian remained at the wharf at Little Rock. The committee are of opinion that the claimants are not entitled to any remuneration on account of the alleged detention of the boat, as there is no evidence before the committee which proves, or conduces to prove, that the boat was detained at Little Rock by the order of the superintendent of emigration, or any other duly authorized officer of the government.



## FORT ATKINSON.

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JUNE 23, 1854.—Laid on the table, and ordered to be printed.

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Mr. FAULKNER, from the Committee on Military Affairs, made the following

### REPORT.

*The Committee on Military Affairs, to whom was referred a memorial of the Legislative Council of New Mexico, asking for the re-establishment of Fort Atkinson, report:*

That, according to order, they have had the same under consideration, and, believing that the re-establishment of this post at this time, at the point indicated, is not demanded by the necessities of the public service, and is, besides, a proper subject of Executive action, they ask to be discharged from the further consideration of the same.

They append to this report a communication from the Secretary of War on the subject, and also refer to the annual report of General Winfield Scott to the Secretary of War, bearing date November 16, 1853, and contained in Executive Documents, 1853-'4, 2d vol., p. 95.

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#### WAR DEPARTMENT,

*Washington, May 20, 1854.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, enclosing a memorial of the Legislative Council of New Mexico for the re-establishment of Fort Atkinson, and asking to be informed of the considerations which prompted the discontinuance of the post.

In reply, I have to state that the fort was abandoned in September, 1853, it being no longer regarded as tenable, owing to the want of suitable buildings, and cannot be re-established without an adequate appropriation by Congress, which would be disproportionately large on account of the remoteness of fuel and timber for building. It may be that a better site can be found in the same section.

Very respectfully, your obedient servant,

JEFF'N DAVIS,

*Secretary of War.*

Hon. C. J. FAULKNER,

*Ch'n Com. Military Affairs, House of Reps.*



**REBECCA BAGGERLY, WIDOW OF DAVID BAGGERLY,  
DECEASED.**

[To accompany bill H. R. No. 425.]

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**JUNE 23, 1854.**

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**Mr. ISRAEL WASHBURN, Jr.,** from the Committee on Revolutionary Pensions, made the following

**REPORT.**

*The Committee on Revolutionary Pensions, to whom was referred the petition of Rebecca Baggerly, widow of David Baggerly, deceased, praying for a pension, have had the same under consideration, and beg leave to report :*

That the following statements contained in the petition are satisfactorily sustained by the evidence in the case, viz : That David Baggerly served in the war of the Revolution, and was at the surrender of Cornwallis, at Yorktown, in 1781 ; that the identity and marriage of the petitioner was proved to the satisfaction of the Commissioner of Pensions, as also was the service of her said husband for a period of between four and five months ; and that application was made by her to the said Commissioner for a pension, which was rejected for the single reason that she was unable to make the positive proof, required by the Pension Office, that her husband had served, as aforesaid, for the full period of six months, but did prove to the satisfaction of the said Commissioner that he served between four and five months.

In addition to this, facts are stated, and appear in the case, which fully warrant the inference, in our opinion, that the said David did serve in fact for the term of six months or more. G. G. Brewer, esq., register of the land office of Maryland, in a letter dated July 11 1848, states reasons which strongly persuade us that this inference is correct. We recommend the passage of the accompanying bill.



JAMES CAPEN.

[To accompany bill H. R. No. 429.]

JUNE 23, 1854.

EDMUNDSON, from the Committee on Revolutionary Pensions,  
made the following

REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition of James Capen, have had the same under consideration, and beg leave to submit the following report:*

It is proved by the rolls that the petitioner served a period of five months and twelve days. He, however, states upon oath that, including the time spent in going to and returning from the places of muster, he served over six months. He also swears that he was draughted for a term of three years' service, and owing to the sickness of his father was obliged to hire a substitute. There is no satisfactory evidence furnished that the petitioner actually served six months, thereby entitling him to be placed on the pension roll under the act of June 7, 1832, and to receive arrears of pension from March 4, 1831, to the present time. But, as he probably may have served that length of time, and is now very old and infirm, your committee are of opinion that he should be placed on the pension roll—his pension to commence from March 4, 1851, about the date of his application. They accordingly report a bill for his relief.





THOMAS AP CATESBY JONES, SURETY OF WALTER F. JONES.

[To accompany bill H. R. No. 431.]

JUNE 23, 1854.

Mr. PARKER, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom was referred the petition of Thomas Ap Catesby Jones, asking to be relieved from a judgment rendered against him as security for Walter F. Jones, formerly postmaster at Norfolk, Virginia, report:*

That, after a careful investigation of the case, they have come to the conclusion the relief sought as aforesaid should be granted.

The committee find the facts of the case to be in brief substantially these:

The Post Office act, of March 3, 1825, governing this case, provides: "That if any postmaster, or other person authorized to receive the postage of letters or packets, shall neglect or refuse to render his accounts, and pay over to the Postmaster General *the balance by him due at the end of every three months*, it shall be the duty of the Postmaster General to cause suit to be instituted against such person or persons so neglecting or refusing."

Regulation of the Post Office Department No. 237 "forbids postmasters to make use of money received for postage;" and regulation 243 provides, in respect to every postmaster required to deposite his postages in bank, that, when his quarterly balance exceeds \$600 per quarter, he will make his deposits monthly, within seven days of the close of each month." Under this law and these regulations, on the 30th day of November, 1830, Jones is appointed postmaster at Norfolk, with Messrs. Andrews, Pollard, and Whitehead, for his securities. At the close of the postmaster's first month, his defalcation was \$21 99. At the close of his next quarter, it was \$208 89; and his quarterly defalcations thence went on increasing, until in July, 1834, they had run up to \$2,454 15. The defalcation then fell to \$1,587 86, at the close of the next quarter; and then regularly ran up again to \$3,554 79 on the 1st of October, 1835.

The gradual accumulation of these defalcations was a fact all the while that stood upon the books of the department and under the eyes of its officers; and the numerous letters, passing back and forth in the mean time between the department and the Postmaster, exhibit the further fact that, though pretending to demand, the department never insisted

upon payment, but wholly failed to bring suit, as the law expressly required, though it was quite obvious the postmaster was in the constant habit of using the government funds in the most flagrant and unblushing manner, *for his own private purposes*. A few extracts from the postmaster's letter to the department, in this behalf, are here presented.

On the 26th of March, 1831, in excuse for failure to deposite, he writes: "I have always kept by me available property, of which I could dispose at three days' notice for cash, ready to meet any deficiency that might possibly occur."

In reply to a letter of the 6th of June, 1831, requiring a deposite, he says: "A decree in a family suit in chancery will be pronounced in the course of the ensuing week, and I am by every mail expecting a power of attorney from my aunt in New Orleans, which will, in a few days thereafter, enable me to receive my dividend of an estate, amounting to, say \$1,500, all of which will be immediately placed to the credit of the Post Office Department."

On the 9th of August, 1834, he says: "My arrangements are now made, so that by the 31st instant I shall be able to cover the whole balance against this office *from sources unconnected with its revenue*."

On the 28th of October, 1834, he writes: "This indisposition arrested me as I was about to leave this for Richmond to negotiate *for a loan to apply to liquidating the balance due to the department*. The sale of the property to which I had reference in my last took place; but, in consequence of an error, the commissioners could not execute a deed, and the whole matter has to be gone over in November. I, however, sold my house servant, and deposited \$550 to the credit of the General Post Office, which, with \$600 deposited July 28, makes \$1,150—the proceeds of sales of my property. I have other property, both real and personal, all of which shall go, upon my return from Richmond, should I be unsuccessful in my plans—of which I have no apprehension. Two of my slaves and my household furniture would produce double the amount, should the sale be necessary."

No punishment, or suit, or censure seems to have been visited upon a delinquency so flagrant and alarming. Finally, however, towards the close of the year 1835, a removal of the postmaster appears to have been contemplated; and on the 13th of November, Andrews and Pollard, two of the sureties (Whitehead having deceased) write the department in the postmaster's behalf, stating their solicitude for his welfare and that of his family, and their own willingness to make reasonable sacrifice to save him. Accordingly, we find that at the close of that quarter the defalcation was reduced to \$1,220 11; and at the close of the next, being 1st of April, 1836, to \$909 26.

The act of the 2d July next following required a new appointment of postmaster and a new bond. The existing securities of the postmaster, wishing to save their friend, of course do not trumpet his delinquency abroad; and the department is supposed to do its duty; Jones is appointed postmaster; the old securities step aside, and the petitioner and Duncan Robertson, on the 8th of August, 1836, are entrapped into their place, at which time it would appear that the defalcation had again run up to between \$1,783 50, as it stood on the 1st of July, to \$1,894 27, the amount on the 1st October next following. At the close of the next

quarter the defalcation was \$1,798 43; and thence it run up to \$6,020 84, on the 1st October, 1837; from which time forth to his last report, 1st April, 1839, the defalcation continued, sometimes more and then less, but was then \$6,637 43.

The committee suppose there can be but one opinion in the minds of all, upon this statement of facts, of the right of the petitioner to be relieved from the defalcation carried over upon him at the time he became security as aforesaid; that in amount must have been about \$1800.

The case of the People of New York vs. Jansen, security of Tappan, 7 Johnson, 362, is much in point, though this is deemed a stronger case than that. In that case the default of Tappan had been running on seven years, although it was the duty of the supervisors to remove him. In that case it does not appear that the supervisors noticed even if they were aware of the default; in this, if the department be not deemed as conniving at the default, its knowledge and notice of it are unquestionable; and yet in utter neglect of the express provisions of the law, no suit is brought; and while the postmaster's defalcation exists to a large amount, he is re-appointed, by means of which the petitioner is innocently decoyed into the snare. In Tappan's case, Judge Thompson, afterwards of the Supreme Court, observed that the case differed from an ordinary one of giving time, inasmuch as it was the express duty of the supervisors, once a year, to examine the accounts and to remove the officer if in default; *and the surety had a right to rely upon the performance of this duty* in calculating his liability. So the committee think in this case, deeming that the guilty government officer ought to suffer rather than their victim, the innocent security.

But there is another feature of this case; by the regulations above recited the postmaster was required to make monthly deposits; this he pretended to do, from his first appointment through to the 13th of May, 1837, under his second. On that day the department addressed him the following order:

"You will until further orders retain the proceeds of your office in your hands, in specie, to meet the drafts of the department, &c."

At the close of the quarter preceding this order, the postmaster's return shows him to have then been in absolute default to the amount of \$3,027 47. From that time forth the quarterly returns show a rapid and large accumulation of funds retained in his hands, which he is in effect told he can retain for an indefinite period. This order is made wholly without authority of law, and in behalf of one known to have been in the habitual misapplication—to call it by the mildest name—of the government funds, in defiance of law and orders, for some seven years.

It is true that the post-office law requires that postmasters shall be required to give bond for the discharge of duties "required by law, or which may be required by any instruction or general rule for the government of the department." The bond in this case was made accordingly; but nobody will contend that the department has power to give any *instruction* or make any *rule*, in direct opposition to law, as in this case. The security is supposed to look to the law alone for the extent of his liability; and further than that, none can justly be imposed upon him. The law is deemed well settled that any material change in the contract discharges the sureties, even though that change may be to

their advantage. The change here made in the contract with the postmaster, was not only likely to prove when made, but did in fact prove, greatly prejudicial to the security. The postmaster had been fully tried and had proved himself wholly destitute of punctuality, a habitual defaulter, well known at the department as using their funds for his own private purposes; and if at all disposed to reimburse, relying upon his relatives, his household servants, and furniture, and his friends, by one shift and another, to enable him to do so. To tell him to retain the funds in his own hands until called for, under such circumstances, was little short of an invitation to appropriate them to his own use *ad libitum*.

In April, 1839, this postmaster appears to have went out of office, having then in his hands the sum of \$6,637 54. Subsequently he made some payments, and on the 12th of March, 1842, suit was instituted against the postmaster and his securities. Prior to judgment, the postmaster died, and, in May of the same year, judgment was rendered against the sureties for the balance then found due, being \$4,387 09, with interest thereon from the 31st August, 1839. The petitioner employed Messrs. Leigh, Stanard and Lyons, eminent counsel of Virginia, to defend him, who being so well satisfied that the defaults of the principal being committed more than two years prior to the institution of the suit against the securities that they could not be held liable; and securities and counsel being ignorant of the array of facts here presented, showing the defalcation when the bond was executed, the culpable conduct of the department in this behalf, and the change of the contract as above indicated, predicated the defence solely on the ground of the delay of suit as aforesaid. The court not deeming the defence a good one, rendered judgment accordingly.

It further appears that the co-surety of the petitioner proved to be wholly insolvent, and thus the whole amount falls on him. While absent in command of the United States squadron in the Pacific ocean, the agent of the petitioner, on the 12th day of July, 1849, to save his property from execution, made a payment on the judgment of \$2,500, leaving still due and unpaid on the judgment, March 17, 1854, the sum of \$5,742 83.

The committee are clear that the said judgment should be released; and that the \$2,500 paid as above stated by the petitioner should be refunded to him. They therefore report a bill accordingly.

JAMES WRIGHT, JR.

[To accompany bill H. R. No. 433.]

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JUNE 23, 1854.

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MR. HENDRICKS, from the Committee on Invalid Pensions, made the following

R E P O R T.

*The Committee on Invalid Pensions, to whom was referred the petition of the guardian of James Wright, of the State of Tennessee, a pensioner of the United States, report:*

That by an act of Congress passed in the year 1840 the said James Wright was made a pensioner of the United States, for disability incurred in the war with Great Britain in the year 1814, at the rate of \$5 33 per month—the disability being at that time two-thirds. Since that time the disability has increased, and is now total. The committee report a bill giving him a full pension, and recommend its passage.



LEWIS E. SIMONDS.

[To accompany bill H. R. No. 434.]

JUNE 23, 1854.

Mr. ASHE, from the Committee on Naval Affairs, made the following,

## REPORT.

*The Committee on Naval Affairs, to whom was referred the memorial of Lewis E. Simonds, together with the accompanying papers, have had the same under consideration, and report:*

That the memorialist, on or about the 6th day of August, 1846, while in the service of the United States, on the coast of Africa, as commander of the armed vessel of the United States called the Marion, arrested and detained, and sent to Boston for adjudication, the brig Casket, of Beverly, Massachusetts, on charge of being engaged in the slave trade; that the circumstances under which he took said brig Casket were such as to convince him and the officers of his ship that she was engaged in the slave trade, in violation of the laws of the United States. That the said brig Casket was duly libelled before the district court of the United States for the district of Massachusetts, and, for the want of sufficient testimony, the libel against her was dismissed.

It further appears that, immediately after said libel was dismissed, the owners and officers of said brig Casket commenced suits against the memorialist for damages, for the taking and detention of said brig, before the district court for the district of Rhode Island.

That the memorialist successfully defended himself, by the aid of able counsel, against said suits, at great expense; and after great delay in the courts, and expense incurred, he was finally acquitted by the circuit court of the United States, sitting in said district of Rhode Island, on the ground that he had probable cause for the arrest and detention of said brig Casket. The committee are satisfied that the memorialist, in the arrest and detention of said brig Casket, was actuated by a sense of duty, as a commander in the naval service of the United States, under the laws of his government, and in obedience to instructions from the Secretary of the Navy, through his superior officer; and having so acted, he ought to be reimbursed for the pecuniary loss he actually sustained in the defence of said suits against him.

It is in proof that his counsel charged him, in both cases, the sum of five hundred dollars, and that said charge, for like services, was not unreasonable or unusual, there being included in it the fee for taking depositions in Boston and Providence, and arguing the cases in the district and circuit courts. The memorialist also asks for his own expen-



ses in attending court, collecting testimony, and aiding counsel in preparing the causes, the sum of three hundred dollars, which the committee do not deem unreasonable. They therefore report the accompanying bill for his relief.

DANIEL MORSE.

[To accompany bill H. R. No. 435.]

JUNE 23, 1854.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Daniel Morse for a pension, report:*

That the said Morse states that he was enlisted as a soldier in the 2d company of 30th regiment of United States infantry, commanded by Solomon Clark, on April 25, 1813; that he marched to Bennington about the 1st of July, was transferred to 1st company, Capt. Simeon Wright; in September crossed Lake Champlain, where he was transferred to Captain D. Azro A. Buck's company as light corps rangers, and continued till they went into winter quarters at Plattsburg in November. While in this company went to Odletown, then to Chatague, then to Henchenbrook, in Canada, and during the time forded the river Chatague five times in eight days; suffered extremely for want of food, having only two days' rations for eight days, and "the last time we forded said river our clothes were soon frozen to our bodies, when we marched for Plattsburg." Morse says it rained and snowed all the way; lay in the woods the first night without shelter, the second night in the snow nearly a foot deep. Eight or ten of the men froze to death that night, and they lay on the cold ground at Plattsburg till the barracks were erected; then the first night there the rheumatism attacked said Morse, and he was helpless for three weeks. He has not been since then twenty-four hours free from pain; he cannot labor, and has no means of support. His character is certified as good by Peter Chase, justice of the peace. William Douney states he was corporal in the same company, acquainted with Morse, and substantiates the truth of his statement, which is also certified to. B. T. Warner corroborates Mr. Douney's evidence, himself being physician in the regiment, who is endorsed in turn by a justice of the peace. Joel Brown, another soldier, states that he is cognisant of the facts set forth by Morse. Thomas Haynes, physician, also proves an acquaintance of 54 years, and is certified to as a reputable physician. Your committee upon this evidence believe said Morse deserving a pension, and do recommend the accompanying bill.

1871. The year of the great fire. The fire started on the 1st of September, and spread rapidly, burning for several days.

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IRA CALL.

[To accompany bill H. R. No. 436.]

JUNE 23, 1854.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Ira Call, for an invalid pension, beg leave to report:*

That the said Call states that he enlisted as a soldier in the war of 1812, in March, 1813, in the 5th company, 23d regiment, United States infantry. That he enlisted at Glenn's Falls, New York, and marched to Greenbush, then to Oswego fort, thence to Fort George, where he remained six weeks. That here he was engaged in hauling timber in the fall of 1814, at Fort Erie, Canada; and while in the service aforesaid, in Lieutenant Ingersoll's company, while engaged in piling up the timber, some of the timbers slipped from their places and fell upon his legs, breaking the skin for some inches in length, and clearing it from the bone. He was loosed from the timbers by the aid of his fellow-soldiers. That, notwithstanding the injury, he proceeded to get more timber, and being in the neighborhood of Poison Joy, where he became so seriously poisoned, that he was laid up in the hospital under a surgeon who has since died. While still on the sick list he returned to aid in the erection of the platform or bastion for which the timber was obtained, and was standing near a trail of powder connecting with the main building of the magazine, when the British officer and men came upon the platform, and were then blown up. The said powder struck him in the face from the trail, and made him for the time entirely blind in both eyes, which have been since more or less inflamed, and the left eye remains entirely blind. The said Call remained at the hospital then six weeks, and was under command of General Higgenboom, paymaster general, and was discharged July 1, 1815. That he has been lame in both legs ever since, which are often highly painful and inflamed; and, being also nearly blind, he is unable to provide for himself; he has never had a pension, and now prays for relief.

His character is proved to be good by E. H. Sanford, notary public. Elias Loper swears to all the facts set forth by the said Call in his affidavit as set forth, having been with him in service, and that said Call was honorably discharged.

Loper's character for veracity is certified to by a justice of the peace. Joshua C. Wright, and George W. Stetson, physicians, allege that they have examined said Call's eyes, and believe that they were affected, as

stated, by powder ; and also his legs are as set forth, which they verily believe to have been poisoned.

E. H. Sanford testifies that said Wright and Stetson are reputable surgeons.

B. M. Hill and N. G. Burham, physicians, state it as their opinion that said Call's inability proceeds from same causes.

Other affidavits accompany the application of Call, verifying his statements as far as they can be by mere examination.

John P. Ceall was also in the 23d regiment, United States infantry, and asserts that Call's affidavit is true, he being endorsed as a man of veracity.

Finally, the third auditor of the Treasury Department, F. Burt, asserts that Ira Call was a private of Captains Delano and Ingersoll's company, in the 23d regiment, United States infantry, enlisted 12th May, 1813, and was reported on rolls 15th May, 1815, and was noted respectively at Queenstown, and sick at Lewistown.

Your committee, believing said Call as being entitled to relief, do herewith report the accompanying bill.

**ISAAC M. SIGLER.**  
[To accompany bill H. R. No. 437.]

**JUNE 23, 1864.**

**Mr. VAIL**, from the Committee on Invalid Pensions, made the following

**REPORT.**

*The Committee on Invalid Pensions, to whom the petition of Isaac M. Sigler for an invalid pension was referred, report :*

That said Isaac M. Sigler, of Putnam county, Indiana, proves that he was elected 1st corporal of Captain Roberts's company of Indiana volunteers in June, 1846; that said company had been reported to and accepted by the governor for the service of the United States in the war with Mexico, and were under marching orders to New Albany as the place of rendezvous; that for a few days before leaving Greencastle, the county seat of said county, they were engaged in drilling, and before starting he was wounded in the left arm by an accidental shot from a gun of a private of said company by the name of Hotsapillar; that said Sigler was so much disabled by said wound as to induce the officers to refuse to take the said Sigler with them.

Captain D. R. Eckles, who was serving under an appointment from the governor of Indiana, and mustered said company into service, had the best means of knowing the facts above stated, and since his return from the army has been well acquainted with said Sigler, and knows that the wound exhibited to the surgeons hereinafter referred to is the same which was inflicted as herein stated.

Surgeons Stewart and Lynch testify that the said wound renders him half disabled.

Your committee, believing that the wound of said Sigler was received while engaged in his country's service, and that he is justly entitled to a pension for half disability, do hereby report a bill and recommend its passage.



JOHN FRAZER, AND THE ADMINISTRATOR OF THE ES-  
TATE OF JOHN G. CLENDENIN.

[To accompany bill H. R. No. 438.]

JUNE 23, 1864.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of John Frazer, on behalf of himself and the estate of John G. Clendenin, make the following report :*

On the 5th day of October, 1838, one Wm. Kirby entered the W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of section 13, township 2 N., range 3 W., and afterwards obtained from the government a patent therefor. Kirby sold the land described in his patent to Frazer and Clendenin for \$100 00, who took possession of the same. While Frazer and Clendenin were in possession of the land, one John P. Davis committed a trespass upon it, for which he was sued in the State court of Indiana, and on the trial Davis produced a patent for the identical same land of a prior date to the patent to Kirby, under which Frazer and Clendenin claimed.

The suit was decided in favor of Davis, and the plaintiffs, Frazer and Clendenin, were charged with the cost, amounting to the sum of \$40 00. Ought the government of the United States to refund to Frazer and the estate of Clendenin the \$100 00 paid by them to Kirby, with interest upon it, and the \$40 00 cost?

With regard to the patent to Davis for the same land, it appears that on the 10th of October, 1817, one Michael Pipkin entered this N.  $\frac{1}{4}$  of section 3, township 2 N., range 3 W., and assigned it to John P. Davis. Davis on the 30th day of March, 1825, relinquished the E.  $\frac{1}{4}$  of said N. W.  $\frac{1}{4}$ , and completed the payment of the W.  $\frac{1}{4}$ . And on the 10th day of October, 1825, he had issued to himself a patent on final certificate No. 2,258—which patent, instead of being issued for the W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of township 3, was by mistake issued for the W.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$  of township 13—which was the land subsequently conveyed by the government to Kirby, and sold by Kirby to the petitioners.

It is clear that the government has issued two patents for the same tract of land, and received the full government price from each of the purchasers.

Under this state of facts the committee report a bill for the relief of the petitioners. Inasmuch as there is no proof submitted to the committee as to the amount paid for the land referred to by the petitioners,



the committee have so framed the bill as to require the proper officers of the Treasury to hear proof, and determine what that amount is, and providing that the amount shall not exceed \$100 00.

The petitioners have asked that they may be paid interest and the cost of defending the title in the courts of Indiana. That the House may determine on this part of the petitioners' claim, the bill has been framed to include both those items, but with no intention to commit the committee, or any member of it, to their support.

PIERRE MENARD AND JOSEPH BOGY, HEIR-AT-LAW OF  
JOSEPH PLACY.

JUNE 23, 1854.—Laid on the table, and ordered to be printed.

Mr. MAY, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom was referred the memorial of Pierre Menard and Joseph Bogy, heir-at-law of Joseph Placy, have considered the same, together with the evidence presented, and report :*

That these are very old claims, and have been before Congress for many years.

Both of these cases involve the same consideration of facts and principles, and have met with various success before the several committees of the Senate and House of Representatives, to whom they have been referred.

The committee find that these claims were very fully investigated by the Committee on Revolutionary Claims of the House of the 1st session of the 26th Congress, and a report of the most conclusive character was made from that committee by Mr. Hall.

That report is adverse to these claims, and, in the opinion of this committee, is so convincing that it ought to have relieved Congress from any further attention to the subject. (Said report is to be found in vol. 3 of reports of committees of the House of Representatives, 1st session 26th Congress, No. 519.)

That report is fully approved, and the committee report against the said claims.



MARY BOYD, WIDOW OF JOHN BOYD.

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JUNE 23, 1854.—Laid upon the table, and ordered to be printed.

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Mr. ROWE, from the Committee on Revolutionary Pensions, made the following

REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition of Mary Boyd, asking a pension as the widow of John Boyd, a revolutionary soldier, have had the same under consideration, and report:*

That the application was first made to the Commissioner of Pensions, and rejected by him because the said John Boyd could not be identified as the husband of the said Mary Boyd. Your committee believe the decision of the Commissioner to be correct, and therefore report adverse to the prayer of the petitioner.

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MARTHA SCOTT, WIDOW OF SAMUEL SCOTT.

JUNE 23, 1854.—Laid upon the table, and ordered to be printed.

Mr. EDMUNDSON from the Committee on Revolutionary Pensions, made the following

REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition of Martha Scott, widow of Samuel, have had the same under consideration, and beg leave to submit the following report:*

There is no proof whatever furnished that the claimant's husband served in the revolutionary war a sufficient time to entitle her to be placed on the pension roll. The facts of the case are fully detailed in the letter of the Commissioner of Pensions to the Hon. Daniel Mace, of January 6, 1854, which is hereby adopted as a part of this report.

Your committee recommend that the petition be rejected.



SAMUEL ROSS, OF OHIO.

JUNE 23, 1854.—Laid upon the table, and ordered to be printed.

Mr. EDMUNDSON, from the Committee on Revolutionary Pensions,  
made the following

REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition  
of Samuel Ross, of Ohio, beg leave to report :*

That as it appears from the petitioner's own statement that all of  
his military service was rendered subsequent to the close of the revo-  
lutionary war, he can of course have no claim to a revolutionary pen-  
sion. They therefore recommend that the petition be rejected.





ROBERT McNEILL—CHILDREN OF.

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JUNE 23, 1854.—Laid on the table, and ordered to be printed.

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Mr. EDMUNDSON, from the Committee on Revolutionary Pensions, made the following

REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition of Catharine Hall and Caroline Gyzdaar, children of Robert McNeill, beg leave to report :*

That the petitioners claim such a pension as their mother "would of right be entitled to," on account of the military services of her husband in the revolutionary war. As it appears, from their statement, that their mother died in 1808, before the passage of any law granting pensions to widows, she had no vested right to any pension gratuity, and of course none descended to her children.

Your committee therefore recommend that the petition be rejected.



JULIA SHERBURNE HORTON.

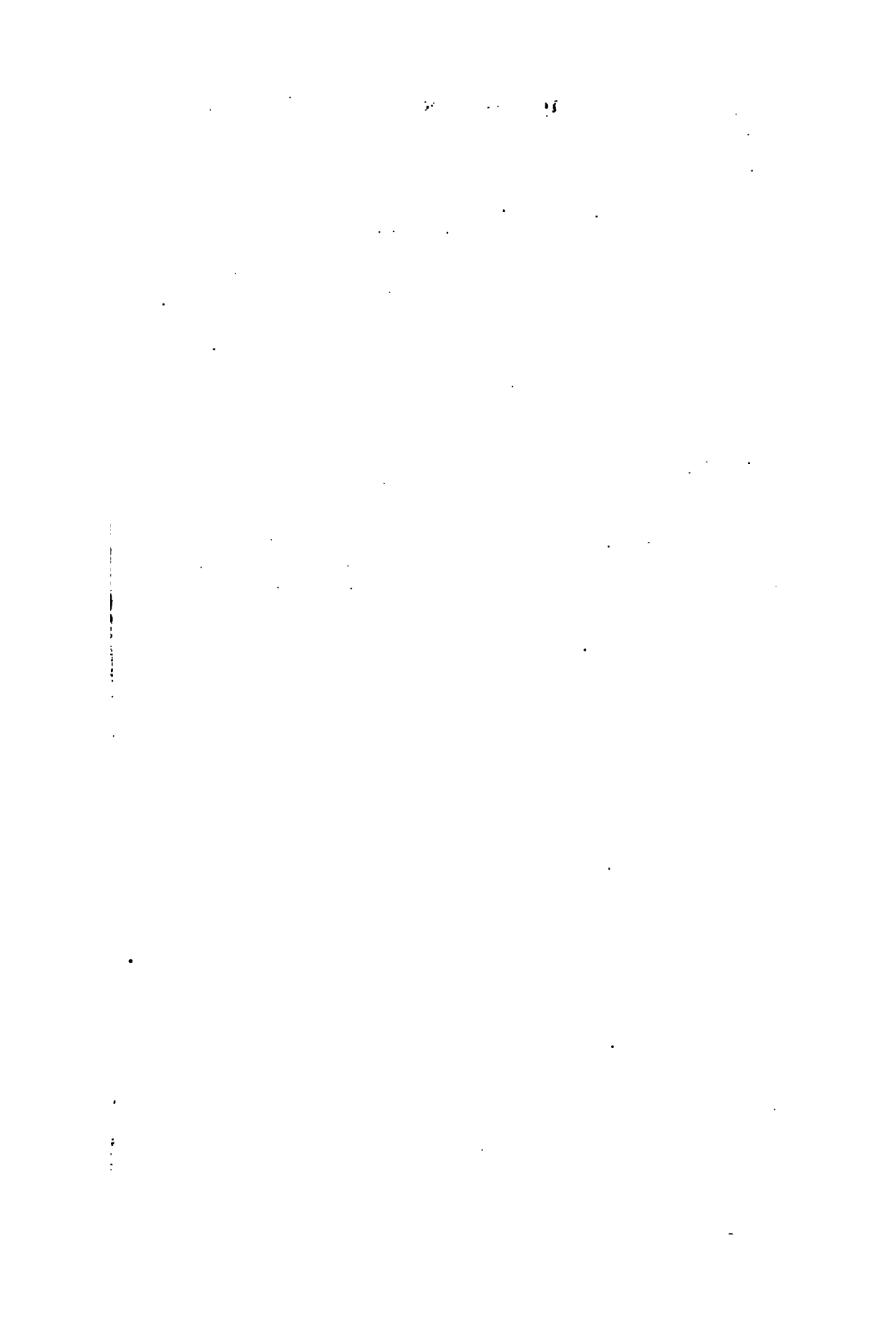
JUNE 23, 1854.—Laid on the table, and ordered to be printed.

MIDDLESWARTH, from the Committee on Revolutionary Pensions,  
made the following

REPORT.

*Committee on Revolutionary Pensions, to whom was referred the petition of Julia Sherburne Horton, only surviving daughter of John Samuel Sherburne, praying for a pension, make the following report :*

That the committee have attentively examined into this claim, and the petitioner asks Congress to pass a special law, granting her a pension for the services said to have been rendered during the revolutionary war by her father, John Samuel Sherburne. As this would be a commencement to establish a new class of pensioners, and as Congress has heretofore declined to pass a general law providing for such cases, and as your committee could not consent to the passage of such a law, they are constrained to report adversely to the claim, and ask to be discharged from any further consideration of the matter.



EPAPHRAS RIPLEY, OF VERMONT.

JUNE 23, 1854.—Laid upon the table, and ordered to be printed.

LINDLEY, from the Committee on Revolutionary Pensions, made  
the following

REPORT.

*Committee on Revolutionary Pensions, to whom was referred the memorial of the heirs of Epaphras Ripley, having had the same under consideration, report:*

but, as there is not sufficient evidence to satisfy this committee that Ripley was a soldier of the Revolution, or rendered services in the course of the Revolution, they report adverse to the memorial.



HELEN MACKAY, WIDOW AND ADMINISTRATRIX OF  
LIEUT. COL. ÆNEAS MACKAY.

[To accompany bill S. No. 170.]

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JUNE 27, 1854.  
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. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred Senate bill No. 170, for the relief of Helen Mackay, widow and administratrix of Lieut. Colonel Æneas Mackay, late a deputy Quartermaster General of the United States army, have, according to order, had the same under consideration, and submit the following report:*

That a majority of the committee are in favor of recommending to the House the passage of the bill; but as the amount involved is large, the justice of the application not entirely free from difficulty, they are deemed it proper to submit to the House the papers which were before them, bearing upon the merits of the claim, which are accordingly appended to this report.

*the honorable the Senate and House of Representatives of the United States of America in Congress assembled:*

The memorial of Mrs. Helen, widow and administratrix of Lieutenant Colonel Æneas Mackay, deceased, deputy Quartermaster General of the United States army, respectfully represents:

That her said husband departed this life suddenly on the 23d day of May, 1850, at St. Louis, Missouri, where he had been stationed for several years by order of the government, and while there he disbursed large sums of money on account of the Mexican war; that among the papers in the possession of the husband of your memorialist, at the time of his death, were two receipts given by Captain W. M. D. McKissack, assistant quartermaster, each of which was for the sum of \$25,000—one dated the 1st day of May, and the other the 14th day of August, 1847; of which the following are true copies, viz:

Received, Santa Fe, May 1, 1847, of Lieut. Col. Æ. Mackay, deputy Quartermaster General, twenty-five thousand dollars on account



of "Mexican hostilities," for which sum I am accountable to United States Treasury Department.

\$25,000.

(Signed duplicates.)

W. M. D. McKISSACK,

*Capt., Assist. Quartermaster.*

(B.) PETER K. STANKIEWICZ.

Received, Santa Fe, August 14, 1847, of Lieut. Col. Æ. Mackay, deputy Quartermaster General United States army, twenty-five thousand dollars on account of "Mexican hostilities," for which sum I am accountable to United States Treasury Department.

(Signed duplicates.)

W. M. D. McKISSACK,

*Capt., Assist. Quartermaster.*

(A.) PETER K. STANKIEWICZ.

In the accounts of the husband of your memorialist for the second quarter of the year 1847 he charged the government with the amount of the receipt aforesaid of the 1st of May, 1847; and in his accounts for the third quarter of that year he charged the amount of the receipt aforesaid of the 14th of August, 1847, and filed a duplicate of each of said receipts, with his accounts of the second and third quarters respectively, which are now on file in the Treasury Department. That the husband of your memorialist was in the city of Washington from the month of February till the 8th of September, 1848, engaged in the settlement of his accounts; during which time he continued to claim credit for the sums set forth in the two receipts aforesaid, which were accordingly placed to his credit by the accounting officers of the Treasury Department, and so remained beyond the date of his death, which will more fully appear by reference to the books of the said department.

Your memorialist further represents that, believing the government was largely indebted to her late husband at the time of his death, shortly thereafter she called the attention of the government officers to the fact, and has for several years been urging the justice of the claim; but so far her efforts have been unavailing. Very recently, to her surprise and mortification, the Third Auditor has submitted his report to the Second Comptroller, in which he rejects the amount claimed under the receipt of Captain McKissack of the 1st of May, 1847, and alleges, for the reasons set forth in said report, that one sum of \$25,000 only was paid by her late husband to the said McKissack on account of the two receipts aforesaid; but notwithstanding the said Third Auditor rejects the amount claimed as aforesaid, he does not in said report question the genuineness of either of the said receipts, which will appear by reference to said report herewith exhibited, marked C. The Third Auditor has evidently departed from a proper and long-established rule of the government in rejecting official and legal vouchers, without any reasonable cause, by which her late husband will seem to have been a public defaulter; while your memorialist believes that if his accounts are properly and justly settled, there will be a large balance against the government. Your memorialist further represents that her husband was a prudent man, and never entered into any speculations by which he lost money; that he served his country faithfully

in the field; and now that he has left her forever, she cannot reflect upon the charge of his being a defaulter without experiencing the most poignant grief and mortification. Your memorialist further represents that the accounts of her late husband from the fourth quarter of the year 1846 to the second quarter of 1849, both inclusive, were settled on the 8th of March, 1851, by the accounting officers of the Treasury Department; and on that settlement both of the receipts above referred to were placed to his credit, which will more fully appear by reference to the letter of the Third Auditor here exhibited, marked D. Your memorialist further represents that, in addition to the receipts aforesaid, she has in her possession the rough cash memorandum-book of her said husband, which, or an extract from the same, will be forwarded in due time to be used as evidence; in which he has entered, in his own handwriting, that on the 1st of May and 14th of August, 1847, respectively, he paid the sum of \$25,000 to the said McKissack, which, taken in connexion with the receipts aforesaid—admitted to be genuine—affords the strongest possible evidence of the payment of the two sums aforesaid, and ought to outweigh the mere omission on the part of the said McKissack to give credit for the \$25,000 specified in the receipt of the 1st of May, 1847, more particularly as the said McKissack, so far as your memorialist knows or believes, has never protested against the justice of the credit claimed as aforesaid, although he was in Washington city, under an order to settle his accounts, about twelve months after the husband of your memorialist presented his accounts for the second and third quarters of 1847, in which he claimed credits for the two receipts aforesaid.

Your memorialist, therefore, prays that your honorable bodies will be pleased to authorize and direct the accounting officers of the Treasury Department to recognise and allow the receipt of the said McKissack of the 1st of May, 1847, as a legal and proper voucher in the settlement of the accounts of her said late husband, and that the balance due, with legal interest thereon, be paid to your memorialist, as administratrix aforesaid; and your memorialist, as in duty bound, will ever pray, &c.

HELEN MACKAY.

By JAS. M. HUGHES, *Attorney*.

WASHINGTON CITY, December 31, 1853.

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TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,  
*January 24, 1854.*

SIR: I have the honor to transmit herewith the papers in relation to the case of Col. Aeneas Mackay, as requested in your letter of the 17th instant, and also the report from this office to the Second Comptroller with reference to the same.

As these papers belong to the files of this office, I have to request that they may be returned without unnecessary delay.

With great respect, your most obedient servant,

F. BURT, *Auditor*.

Hon. C. J. FAULKNER,  
*House of Representatives.*

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,  
December 28, 1853.

SIR: In compliance with your verbal request, I have to inform you that the account of Capt. W. M. D. McKissack from the second quarter 1847 to the third quarter 1848, inclusive, was settled on the 29th August, 1849; and that of Lieut. Col. E. Mackay, from the fourth quarter 1846 to the second quarter 1849, inclusive, on the 8th March, 1851. The letter of Col. Mackay transmitting his account for the second quarter 1847 to the Quartermaster General is dated St. Louis, December 9, 1847. The two receipts of Capt. McKissack to Col. Mackay, dated May 1 and August 14, 1847, for 25,000 each, were passed to Col. M.'s credit in the settlement of his account above mentioned.

Respectfully, your obedient servant,

F. BURT, *Third Auditor.*

F. RISQUE, Esq., *Present.*

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this 10th day of January, A. D. 1854, personally appeared before me the undersigned, United States commissioner appointed by the circuit court of the United States for the district of Missouri, A. S. Robinson, cashier of the Bank of the State of Missouri, who being first duly sworn, deposeth and saith: that he has examined the cash memorandum-book of the late Lieut. Col. Eneas Mackay, deputy Quartermaster General United States army, and finds charged on said book, in May, second quarter of 1847, the sum of twenty-five thousand dollars to the late Capt. McKissack, quartermaster United States army, as so much money paid him on account of the government; and that he finds charged in the month of August, third quarter of 1847, a like sum of *twenty-five thousand dollars* to the said McKissack, on account of the government. That these cash entries are in the proper handwriting of the said Eneas Mackay. And he further certifies, that in June, 1847, the Bank of the State of Missouri was in advance to the said Eneas Mackay upwards of thirty thousand dollars, on account of government disbursements, which the books of the bank show; and further, that in the year 1850, commencing with the 19th of March and ending with December 21, the bank aforesaid was in advance to the said Eneas Mackay, for government purposes, the sum of one hundred and forty-four thousand dollars. And he further certifies that, in the year 1850, government officers obtained money from said bank for government use, drawing their drafts payable when Congress should pass the appropriation bills. That the same was done with other banking institutions in this city during that year. That the said bank did, in the year 1847, and up to 1850, advance to public officers of the government large sums of money, to facilitate their payments to creditors of the government, in advance of appropriations by Congress, and that they deposited vouchers with said bank, which were treated as specie funds by the bank until reimbursed by said officers. And he further certifies that the said Eneas Mackay did check out of said

book, between the 3d and 20th of August, 1847, the sum of \$31,085 63, wit: on the 3d of August, \$18,984 15, and on the 20th of August, \$12,101 48.

A. S. ROBINSON, *Cashier.*

Subscribed and sworn to before me this 10th day of January, 1854.

BEN. F. HICKMAN,

*U. S. Commissioner Missouri District.*

ST. LOUIS, *January 10, 1854.*

I have this day examined a book purporting to be "Cash-book of Major Mackay, Quartermaster's Department," in which the following entries are made, viz:

1847, 2d quarter, May.	Paid Capt. McKissack.....	\$25,000
1847, 3d quarter, Aug.	Paid Capt. McKissack.....	25,000
Total.....		<u>50,000</u>

BERNARD PRATTE,

*President of the Bank of the State of Missouri.*

CIRCUIT COURT OF THE UNITED STATES }  
for the district of Missouri. } *act:*

This day personally appeared before me the undersigned, clerk of the circuit court of the United States for the district aforesaid, Peter K. Stankiewicz, who being personally known to me, and first being duly sworn, says that he was the chief clerk of Captain W. M. D. McKissack, and was employed by him in November, 1846, and continued as such till February, 1848—said Captain McKissack then being stationed at Santa Fé, New Mexico, and acting as assistant quartermaster of the United States army; that the duplicate receipts marked A and B, with my name now put on them—one dated May 1, 1847, and the other dated August 14, 1847—the body of them are in my handwriting; which receipts were signed by the said Captain W. M. D. McKissack, at the places aforesaid, in his own handwriting: the originals this affiant supposes to be on file in the Auditor's office at Washington city. That he knows positive no receipt or receipts were given whilst he acted as clerk for the said Captain W. M. D. McKissack, at Santa Fé, to any one, without he, the said Captain McKissack, had received the money on said receipts. The receipts marked A and B, as aforesaid, he is certain the amount set forth in them was received by the said Captain W. M. D. McKissack, assistant quartermaster of the United States army, from Colonel Æ. Mackay, deputy quartermaster of the United States army, or they would never have been given; and further this affiant hath not.

PETER K. STANKIEWICZ.

MISSOURI DISTRICT, *act:*

I, Benjamin F. Hickman, clerk of the circuit court of the United States for the Missouri district, do certify that Peter K. Stankiewicz,

whose name is subscribed to the foregoing affidavit, this day appeared before me, in my office, and made oath that the statements contained therein are true to the best of his knowledge and belief.

In testimony whereof, I hereunto subscribe my name and affix the [L. s.] seal of said court, at office, in the city of St. Louis, this 30th day of May, A. D. 1853.

BENJ. F. HICKMAN, *Clerk.*  
By JNO. M. PEARSON, *Deputy.*

CIRCUIT COURT OF THE UNITED STATES } *act:*  
for the Missouri district.

This day personally appeared before me the undersigned, clerk of the circuit court of the United States for the district aforesaid, George A. Gannett, who being personally known to me, and being first duly sworn, says that he was clerk for the late Colonel Æ. Mackay, deputy quartermaster of the United States army, in May, 1847, and prior to that time, and now is clerk for Major Vinton, quartermaster of the United States army, at St. Louis; that in the month of May, eighteen hundred and forty-seven, an amount of money (specie and gold) was forwarded to Fort Leavenworth, for the pay, subsistence, and quartermaster's departments, the ultimate destination of which was Santa Fé, in New Mexico; and, as well as he can recollect, *twenty-five thousand dollars* was intended for the quartermaster's department at Santa Fé—then in charge of Captain W. M. D. McKissack, assistant quartermaster of the United States army—which sum of money was sent for the use of said McKissack. That this affiant was present, and assisted the late Colonel Mackay as aforesaid, in the month of May, 1847, in the city of St. Louis, State of Missouri, when said sum of money, to wit: twenty-five thousand dollars, was put in boxes, hooped, &c., and placed in government wagons going to Fort Leavenworth, under escort of Captain John Love's troop of dragoons, then under command of said Captain Love.

The affiant further states that the said Colonel Mackay drew a check on the Bank of the State of Missouri, in connexion with this transaction, for a larger amount than twenty-five thousand dollars; but the difference in the amount was turned over to John Neff, then assistant quartermaster, to defray the expenses of the "party" from St. Louis to Fort Leavenworth; the said Neff was on duty at St. Louis at the time aforesaid, (May, 1847,) and was detailed by the late Colonel Mackay to accompany the aforesaid escort in charge of said sum of money. This affiant thinks the check on the bank was for \$25,500; and further this affiant saith not.

GEO. A. GANNETT.

MISSOURI DISTRICT, *act:*

I, Benjamin F. Hickman, clerk of the circuit court of the United States for the Missouri district, do certify that George A. Gannett, whose name is subscribed to the foregoing affidavit, this day made oath before me that the statements therein contained were true to the best of his knowledge and belief.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, this 28th day of May, 1853.

BENJ. F. HICKMAN, *Clerk.*  
By JNO. M. PEARSON, *D. C.*

INDIANAPOLIS, INDIANA, *April 26, 1853.*

SIR: Your communication of the 22d instant has just been received. In answer I would state, that in May, 1847, I commanded the escort for funds for the use of the troops and departments in New Mexico. I gave no receipts for the funds, and consequently took none; but I feel almost certain that the late Col. Mackay placed under my charge a box containing \$50,000—one-half for the late Captain McKissack, the other for the commissary department. Major Lee, commissary, may recollect the case. Mr. Smoot, now a clerk in the Indian department at Washington, may give you some information. Any questions you would like me to answer in connexion with this matter, do not hesitate to write, as I will take pleasure in giving all the information in my power.

I am, sir, very respectfully, your obedient servant,

JOHN LOVE.

JAS. M. HUGHES, Esq.,  
*St. Louis, Missouri.*

This day personally appeared before me, the undersigned, United States commissioner, appointed by the circuit court of the United States for the district of Missouri, George A. Gannett, who being personally known to me, and being first duly sworn according to law, states that he was the *clerk* in the year 1847 for the late Lieut. Col. Æ. Mackay, deputy Quartermaster General, then stationed at St. Louis; that he has this day been shown the cash memorandum-book of the said Mackay for the year 1847, *which he knows to be the same book*, and that he finds charged in said book, in the proper handwriting of the said Mackay, twenty-five thousand in the month of May, second quarter of 1847, as so much money paid to the late Capt. W. M. D. McKissack; and also finds on said book the further sum of twenty-five thousand dollars, charged in the month of August, 1847, third quarter, to the said McKissack, in the handwriting of the said Mackay as aforesaid; and further this affiant saith not.

GEO. A. GANNETT.

Subscribed and sworn to before me, this 7th day of January, 1854.

BEN. F. HICKMAN,  
*U. S. Commissioner, Missouri District.*

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TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,  
*January 7, 1854.*

SIR: The accounts of Æ. Mackay, deceased, late brevet colonel and deputy Quartermaster General, for disbursements on account of quar-

termaster's department at St. Louis, Missouri, in the third and fourth quarters of 1849, and the first and second quarters of 1850, as rendered by Lieut. Col. Thomas Swords, having been audited and reported to the Second Comptroller of the Treasury for his decision thereon have been returned by him to this office, exhibiting a balance due to the United States of \$7,072 67, differing from the account-current as rendered by Lieut. Col. Swords in the sum of \$30,212 63, which difference the enclosed copy of sheet of remarks will explain.

I am, sir, your obedient servant,

F. BURT, *Third Auditor.*

FERDINAND RISQUE, Esq.,  
Washington, D. C.

*Statement of difference arising on settlement of the account of Aeneas Mackay, deceased, late Brevet Colonel and deputy Quartermaster General at St. Louis, Mo., for the 3d and 4th quarters 1849, and 1st and 2d quarters 1850, as rendered by Lieutenant Colonel Thomas Swords.*

Balance due United States, per official statement .....	\$7,072 67
Balance claimed as due Colonel Mackay, per account-current as rendered by Colonel Swords .....	23,139 96
Difference .....	<u>\$30,212 63</u>

Arising as follows:

Amount charged as "balance due Colonel A. Mackay, account-current of contingencies 2d quarter 1849;" inadmissible as a charge against the quartermaster's department—should be made in account-current for army contingencies rendered to the Second Auditor's office .....	\$73,565 95
Voucher 6, B—present settlement; referred to the Second Auditor's office .....	6 00
Amount of the following sums erroneously credited Colonel Mackay, on the acknowledgment of the following named officers, now recharged to him, viz: acknowledged by Captain McKissack, \$9,924 37; ditto by Captain Kennerly, \$800; ditto by Lieutenant McKenny, \$1,500; ditto by Lieutenant Jenkins, \$150 .....	12,374 37
Amount received from Major G. H. Crosman, 17th May, 1850, not credited in account-current .....	666 66
This sum, being one of the two sums heretofore credited Colonel Mackay, as advanced to Captain McKissack, now charged to Colonel Mackay, by direction of the Second Comptroller of the Treasury .....	25,000 00

This sum, being amount twice credited to Colonel Mackay in the settlement of the accounts of Lieutenant J. N. Caldwell, now re-charged to correct the error .....	\$181 86	
Amount of draft No. 1, drawn by Captain Dana, and paid by Captain L. C. Easton, erroneously credited to Colonel Mackay, is now re-charged to correct the error.....	256 20	
	<hr/>	\$112,051 04
Deduct :		
Amount of difference in his favor on former settlement .....	70,414 17	
Amount of vouchers heretofore suspended, now admitted, per abstract.....	903 43	
Amount of part of voucher 56 B, 3d quarter 1849, formerly disallowed, but now charged to Captain C. C. Sibley.....	7 56	
Amount of error in entering the amount of advances to officers in account-current: amount of abstract \$472,644 26, entered \$472,643 86—difference in favor of Colonel Mackay....	40	
This sum, being amount paid by him for office rent at St. Louis, in 4th quarter 1849 and 1st quarter 1850, admitted to his credit November 22, 1852, settlement No. 1969, not charged by Colonel Mackay .....	90 00	
Amount of requisition No. 8733, transferred to his credit from the Second Auditor's office, November 24, 1851.....	551 99	
Amount of requisition No. 6708, January, 1850, \$1,500, and No. 7071, March, 1850, \$8,372 86, charged to Colonel Mackay last settlement, are now credited by him. (These requisitions are in payment of two drafts on the Quartermaster General—No. 3, \$1,500, dated 18th December, 1849, and No. 21, \$8,372 86, dated March 18, 1850—and which are now credited by Colonel Mackay).....	9,872 86	
	<hr/>	81,838 41
Difference explained .....		<u>30,212 63</u>

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,  
December, 1853.

SIR: Herewith I report a restatement of the accounts, on account of the quartermaster's department, of Aeneas Mackay, late lieutenant colonel and deputy Quartermaster General United States army, by



which it will appear that he is a debtor to the United States in the sum of \_\_\_\_\_.

This result is occasioned by charging him with the sum of \$25,000, heretofore credited as so much advanced to the late Captain William M. D. McKissack, per his receipt dated May 1, 1847, by which Colonel Mackay is apparently made a creditor of the United States in the sum of \_\_\_\_\_, and which his family now demand shall be refunded. There are but two ways whereby a disbursing officer of the United States can become a creditor: first, by the allowance at the treasury of vouchers for disbursements which he never made; and, secondly, by advances of money from his own private means for the use of the government. In this case, it is not contended that Colonel Mackay has had presented or allowed any false vouchers for disbursements; and the question is, therefore, narrowed to the simple point, whether he did or did not advance from his private means the \$25,000 above mentioned.

Before I proceed to examine this view, it is proper that I should make a few remarks upon the legal question involved in this account.

There is no law which compels a disbursing officer to advance his private funds, under any circumstances, for the government; and if an officer does so, he does it without any legal right to hold the government responsible to him for the money so advanced; and before he could in equity have a right to look to the government for a voluntary advance made by him, it would be incumbent on him to show that the money was appropriated to the use of the government and so expended. The deduction is clear from the account-current of Colonel Mackay, that the sum here claimed arises from an advance claimed by him to have been made to Captain McKissack of \$25,000, which Captain McKissack has not noticed in his account-current. In the legal view which I have taken of this matter, it is impossible that I can admit the demand made by the heirs of Colonel Mackay, but I will proceed to review the testimony advanced in support of it.

I maintain that he did not, for the following reasons: 1. No disbursing officer of the War Department has the legal or customary right, of his own mere private judgment of the wants of the service, to use his money for public disbursements, and thereby, without any notice to or consultation with the proper authorities, constitute himself a creditor of the United States. This position I hold to be indisputable, and to be sustained by all law and practice without any exception. If Colonel Mackay wanted funds for public purposes, he had only to apply in the proper quarter, or to draw his drafts upon the War Department, to have had all his needful demands immediately answered. This is abundantly proved by the accounts of Colonel Mackay themselves, which show that from the 4th quarter 1846, to the 2d quarter 1849, by advances direct from the treasury, drafts drawn and paid and advances by other disbursing officers, he received no less a sum than \$1,118,429, which might have been increased to almost any extent for public uses at the post of St. Louis alone. At no time during that period was the government in any difficulty for money to carry on all its operations, whether of peace or war; and it is well known that drafts of disbursing officers could readily be cashed for specie where drawn,

and indeed were eagerly sought after by the mercantile community as safe and convenient means of remittance.

2. Having shown that Colonel Mackay was without legal authority or necessity to make this advance, I aver that he had not the pecuniary ability to do so. The letter of Messrs. J. B. Brant and Robert Campbell, his sureties, to the Quartermaster General, herewith, asks a speedy settlement of his accounts, that, "if he has money due him, either for *advances* or pay, his *large* and *needy* family may obtain it." I conclude, therefore, that if his circumstances were such as to leave at his death a needy family, he could not, three years before, have advanced for the use of the United States so large a sum as \$25,000, when he must have known that he would lose the interest for three or four years, which could easily have been obtained from private investment. If we admit this, we must believe also that Colonel Mackay chose to loan his money to the government without interest, at a clear loss of at least \$1,500 per annum, instead of gaining by another mode of investment, as he could have done, that amount to provide for a family large and confessedly in need. This I hold to be improbable, if not impossible.

3. That by excluding said \$25,000 from the accounts of Captain McKissack, to whom it is alleged it was paid, and the final account rendered for Colonel Mackay, both are about balanced; Captain McKissack balancing his accounts by refusing to acknowledge the receipt of said amount.

And lastly. It is claimed on the part of Colonel Mackay, that he advanced to Captain McKissack two sums of \$25,000 each—that now in dispute, in May, and another in August, 1847. That advanced in August is admitted by Captain McKissack, and he has been charged and Colonel Mackay credited therewith accordingly; but, as has been before noted, Captain McKissack does not admit the receipt of the \$25,000 said to have been advanced in May.

To prove this advance on the part of Colonel M., the depositions and letter herewith are submitted. The first is by Peter K. Stankiewicz, who swears that at the time he was chief clerk of Captain McK., and that his receipt to Colonel M., dated May 1, 1847, is in his handwriting, and signed in the proper handwriting of Captain McK.; that he is *positive* that whilst he was clerk as aforesaid, no receipt was given by Captain McK. for which he did not receive the money, and that he is *certain* that the amount of said receipt of May, 1847, was received by him from Colonel Mackay.

The second is a deposition of George A. Gannett, who states that he was at that time clerk to Colonel Mackay. That in the month of May, 1847, an amount of money, (specie) \$25,000, to the best of his recollection, was forwarded to Fort Leavenworth, (300 miles distant from St. Louis,) destined for Captain McKissack, at Santa Fé, New Mexico. That he was present at St. Louis in May, 1847, and assisted Colonel M. when said \$25,000 was put in boxes and placed in government wagons going to Fort Leavenworth, under the escort of Captain Love, United States dragoons. That in connexion with the transaction, Col. M. drew a check on the Bank of Missouri for \$25,500; \$500 of which was turned over to John Neff, then assistant quartermaster, to defray the expenses of the party from St. Louis to Fort Leavenworth, and

that said Neff was detailed by Colonel M. to accompany the escort with said sum of money. Third, a deposition of A. S. Robinson, cashier of the Bank of the State of Missouri, stating that a check drawn by Colonel M. on said bank, for \$25,500, was paid in May, 1847; and, fourth, a letter from Captain John Love, United States dragoons, stating that in May, 1847, he commanded the escort for funds for the use of the troops and department in New Mexico, and that he is *almost* certain that Colonel Mackay placed in his charge a box containing \$50,000, one half for the late Captain McKissack, and the other for the commissary department.

Now, it is well known that a journey by government wagons from St. Louis, via Fort Leavenworth, to Santa Fé, would, and probably did, occupy the whole interval between May and August, 1847. I am perfectly satisfied that the \$25,000 described in the foregoing proofs was the indetical sum delivered to Captain McKissack in August, 1847, for which he acknowledged and receipted, and with which he has been charged and Colonel Mackay credited.

All of which is respectfully submitted.

F. BURT, *Third Auditor.*

JOHN M. BRODHEAD,  
*Second Comptroller of the Treasury.*

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SECOND COMPTROLLER'S OFFICE,  
December 31, 1853.

This case has been carefully investigated in this office, and I concur in the foregoing opinion and report of the Third Auditor.

J. M. BRODHEAD, *Comptroller.*

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*Extract from a letter written to Mrs. Mackay, previously to Colonel Mackay's departure from Fort Laramie to Fort Pierre.*

FORT LARAMIE, July 31, 1849.

• • • • •  
In the settlement of my public accounts, the aid of some kind friend who is acquainted with such matters will be necessary, and then very little trouble will arise. There are a number of discrepancies between the accounts of myself and Captain McKissack, especially in the transfers of funds. Wherever I have charged sums which he does not acknowledge, his receipt or draft will be found as a voucher; and furthermore, I believe, by a careful inspection of my check-books or memorandums, it will be found that I have actually paid the money, generally by check, but sometimes by treasury notes, treasury drafts, &c. In cases where he has credited sums to me and I have not charged them, it may have occurred from his having included several drafts in one receipt, and I only paying a part of them. This might account for the discrepancies on either side. • • • • •

• • • • •  
ENEAS MACKAY,

*Deputy Quartermaster General.*

Mrs. HELEN MACKAY, *St. Louis, Missouri.*

MARY H. CUSHING.

[To accompany bill H. R. No. 442.]

JUNE 30, 1854.

Mr. HIESTER, from the Committee on Public Lands, made the following

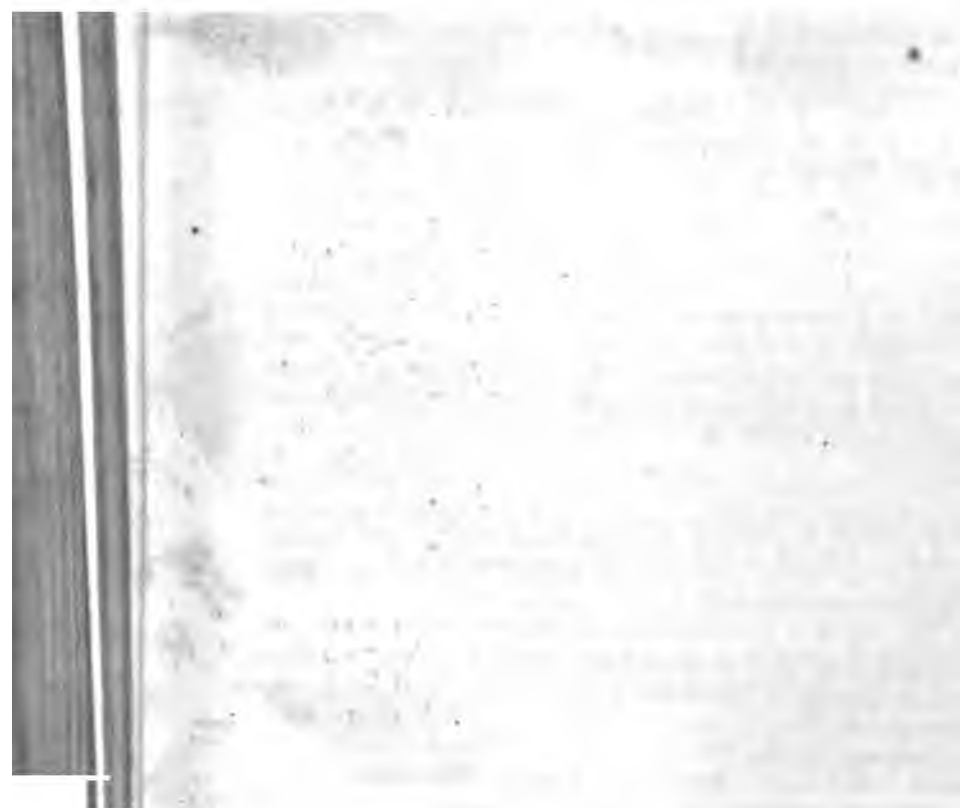
REPORT.

*The Committee on Public Lands, to whom were referred the memorial and papers of Joseph W. Cushing, for bounty land to Mary H. Cushing, report:*

That it satisfactorily appears, from the memorial and accompanying affidavits, that John Wainright Cushing, father of Mary H. Cushing, served as a lieutenant and sustained injuries in the war of 1812, in consequence of which he was admitted as an invalid pensioner of the United States; that the said John Wainright Cushing died about ten years ago, leaving a widow, who is since married, and two children—one of whom, Mary H. Cushing, was born deaf and dumb, has been a charge on the town of Chelsea, in Maine, and is now dependent on her brother for support.

That your committee believe that the provisions of the act of September, 1850, allowing minor children to receive the military bounty land to which their deceased father would have been entitled, were designed to provide for the helpless; and that the present case, although not within the letter, is embraced by the spirit of the law.

They therefore report a bill, directing the Secretary of the Interior to issue to Mary H. Cushing a warrant for so much bounty land as her father, if living, would have received.



UNSOLD LANDS IN SYMMES'S PURCHASE.

[To accompany bill H. R. No. 443.]

JUNE 30, 1854.

Mr. PARKER, from the Committee on the Judiciary, made the following

REPORT.

This case, in brief, is this: In the sale of lands to John Cleves Symmes, between the two Miami rivers, in the now State of Ohio, sections eleven were reserved to the United States. Randolph Coyle and John Delafield, supposing that there was a fractional section of that number in fractional township number four, in fractional range number one, which had never been sold by the government, make application to enter the same. If there be any such land, it is in the most business part of the city of Cincinnati, and embraced mostly, if not altogether, in what has been dedicated and used as the public landing for more than half a century prior to the application to enter the same; and the part sought now to be entered, according to the showing of Coyle and Delafield, does not much exceed one-half acre.

The committee have examined the facts of this case with some care, and conclude that no such fractional section as is contended for ever existed; but were there any such, it was on the crumbling bank of the river, and was never deemed of any consequence to the government, and was abandoned prior to the present century, and has ever since been abandoned to said city.

In accordance, therefore, with divers other relinquishments of any title the government may have had in similar cases, the committee recommend that the government vest any title she may have in the premises, in said city and others who may be in the occupation of said land, if there be any—saving any legal or equitable rights of third parties; and they report a bill accordingly, and recommend its passage.



UNITED STATES PRISON IN THE CITY OF NEW YORK.

[To accompany bill H. R. No. 444.]

JUNE 30, 1854.

Mr. MAY, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom was referred the memorial of the grand jury attending the circuit court of the United States for the southern district of New York, asking that a prison may be erected in that city for the use of the general government, has considered the same, and obtained further information on the subject, and beg leave to report:*

That the prayer of the memorial ought at once to be granted.

Now and heretofore the prisoners under process of the United States, and also witnesses who have not been able to give a recognizance for their appearance, are and have been confined in the prisons of the city of New York, and adjoining counties when the city prisons have not afforded accommodations for them.

The prisons thus used are generally remote from the United States court-house, and do not afford either safe or comfortable quarters for the large number of such prisoners.

It has sometimes happened that persons of different sexes have been thrown together in such confinement, and usually that their health has suffered by reason of the small and badly constructed apartments occupied by them. Surely such treatment will be a great reproach to the government if it be allowed to continue after it is brought to the notice of Congress; especially so, when it is considered that such prisoners, being only held for trial, are presumed to be innocent until convicted; and many of them, upon trial, are found to have been unjustly accused. Besides, a large number are held as witnesses, being too poor or friendless to procure sureties for their appearance to testify.

But aside from the common duties which humanity enjoins in the treatment of prisoners, there are strong reasons why the exclusive jurisdiction over a prison should be exercised by the United States government in the city of New York.

Under the extradition clauses of our treaties, and also under the constitution and laws of the United States, there are frequent occasions to confine persons arrested and detained in that city. It is important, as experience has shown, to the safe-keeping of such prisoners, and the due execution of our treaties and the laws, that a place of confinement, under the charge and responsibility of a United States officer, and its sole jurisdiction, should be provided.

The committee report herewith a bill.





N. G. EVANS.

JUNE 30, 1854.—Laid on the table, and ordered to be printed.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

## REPORT.

*The Committee on Military Affairs, to whom was referred the memorial of N. G. Evans, a lieutenant in the 2d dragoons United States army, have, according to order, had the same under consideration, and submit the following report:*

The facts established in the case are these:

That about the 25th of September, 1850, Lieutenant Evans, being on his return from New Mexico to Fort Leavenworth, received an order to repair to Santa Fé, New Mexico, which order he immediately obeyed, without proceeding to the fort for his clothing, equipage, and other property, which he had left there; that on the 30th of September, 1850, four boxes and one chest, marked for Lieutenant Evans, Santa Fé, were receipted for by Brown, Russell & Co., contractors for transporting government stores from Fort Leavenworth to Santa Fé—(a copy of the receipt is herewith annexed as part of this report, marked A;) that on or about the 25th of November following, the train in which were being transported the four boxes and one chest belonging to Lieutenant Evans was overtaken by a snow-storm, during which a large number of cattle used as oxen in said train were lost, so that it could not proceed for the want of teams; that while it remained waiting for the wagon-master, who had gone to bring other teams, the Indians set fire to the prairie, which communicated to the said train, which was almost entirely destroyed—the said boxes and chest being consumed, notwithstanding every effort was made by those in charge to protect the same and extinguish the fire.

Lieutenant Evans estimates his loss by this casualty at \$800; of this, however, there is no evidence, positive or conjectural, beyond his statement of the value of the goods lost.

Lieutenant Evans further states that his property was forwarded by the government officers without any consultation with or order from him. Upon this point there is no evidence.

The committee cannot perceive upon what principle it is asked that the government should be held responsible for the loss incurred by Lieutenant Evans from the casualty above described. If upon the doctrines which apply to common carriers, and there be any responsibility in this case for the loss incurred, that responsibility is clearly upon Brown, Russell & Co. If the loss occurred from the act of hos-

tile Indians at war with the United States, upon which the evidence is not clear, then there is no responsibility either upon the common carriers or the government.

The committee are of the opinion that the petition be rejected for the present, with leave to renew the same at a future time upon any additional evidence being adduced to strengthen the claim of the petitioner.

---

A.

Received, Fort Leavenworth, Missouri, September 30, 1860, of Brevet Major E. A. Ogden, assistant quartermaster United States army, in good order and condition, the following military stores, which we agree to deliver with all practicable despatch, in like good order and condition, unto the assistant quartermaster United States army at Santa Fé, the freight thereon being payable by the assistant quartermaster at Fort Leavenworth, at the rate of 14½ cents per pound, as per contract; the receipt and weight being endorsed hereon by the assistant quartermaster at Santa Fé.

*Train No. 4—29 wagons.*

<i>'Marks.</i>	<i>Packages.</i>	<i>Lbs. weight.</i>
U. S. A. C. S., Santa	939 sacks of flour.....	93,900
Fé, New Mexico.	466 bales bacon sides.....	47,169
Company K. 1st dra-	43 boxes clothing equipage.....	8,627
goons, Santa Fé.	5 tierces clothing equipage.....	916
	8 chests clothing equipage.....	561
	1 trunk clothing equipage.....	60
Lieut. N. G. Evans, 2d	4 boxes.....	588
dragoons, Santa Fé,	1 chest.....	153
New Mexico.		
:		151,979
:		

(Triplicates signed.)

BROWN, RUSSELL & CO.

A true copy :

E. A. OGDEN,  
Asst. Quartermaster U. S. Army.

CIVIL TOWNSHIP OF MARION, MERCER COUNTY, OHIO.

[To accompany bill H. R. No. 446.]

JUNE 30, 1854.

Mr. NICHOLS, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of citizens of civil township of Marion, in the county of Mercer, beg leave to report:*

1. That said township is composed of fractions of territory in which, according to congressional surveys, no section sixteen occurs; that this was caused by Indian reservations made at an early day, which, when surveyed, caused these fractions; that the fractional townships have never had the benefit of school lands.
2. The committee further report that the fractions thus embraced in the civil township comprise a full congressional township in extent, lacking a small fraction of less than an eighth of a township; that under the law of Congress of May 20, 1846, the township is entitled to school lands. They therefore report a bill for the relief of said township.





HEIRS OF BENJAMIN METOYER.

[To accompany bill H. R. No. 447.]

JUNE 30, 1864.

Mr. HILLYER, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the petition of Benjamin Metoyer, have had the same under consideration, and report:*

An act was passed by Congress and approved February 5, 1825, entitled "An act confirming certain claims to land in the western district of Louisiana," which provides that "all the claims to land embraced in the report made by the commissioners appointed for adjusting the titles and claims to land in the western district of Louisiana, upon the 13th of December, A. D. 1815, and recommended by them for confirmation, be and the same are hereby confirmed: *Provided* no person or persons shall be entitled, by any one claim, to a greater quantity than one league square under this act." (See U. S. Statutes at Large, volume 4, page 81.)

By reference to American State Papers, Public Lands, volume 3, page 172, it will be seen that the claim of Jean Lasauve to 640 superficial arpents of land, situated on the left bank of Bayou Courant, in the county of Natchitoches, is reported favorably upon in the report of the 13th December, 1815, and is consequently embraced by the act of 5th February, 1825.

The heirs and legal representatives of Benjamin Metoyer, deceased, are now the owners of this land by title derived from Lasauve; but owing to an omission in the law confirming these claims, of an express authority to issue patents therefor, the government has failed to issue patents, and in consequence a part of the above claim has been entered, to wit, 123 $\frac{1}{8}$  acres, by Maximilian Laurenandier, whose title has been declared by the courts of Louisiana to be superior to that of the petitioners, by reason of fact that petitioners had no patent of their lands, although an act of Congress had recognised and confirmed the same.

The petitioners now ask to be compensated by Congress for their loss, occasioned by the government selling the land which had been confirmed to them by an act of Congress. The committee, believing their claim to be just, have prepared a bill for their relief, which accompanies this report.



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1880

WILLIAM H. WEIRICK.

[To accompany bill H. R. No. 448.]

JUNE 30, 1854.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the memorial of William H. Weirick, late a lieutenant in company G of Colonel J. D. Stevenson's New York regiment of California volunteers, have, according to order, had the same under consideration, and submit the following report:*

It appears that the memorialist was mustered into service on the 1st of August, 1846, as a second lieutenant of the company, in the regiment aforesaid; that he embarked for California with the said regiment; that on or about the 1st of January, 1847, whilst doubling Cape Horn on his way to California, in the discharge of his duty, he was seized with a severe cold, occasioned by the climate in that region, which completely prostrated his system, and from the effects of which he never has recovered; that after remaining in California nearly a year, during which time he was seldom able to do duty, on account of his disease, he was, by special orders "No. 3, dated January 10, 1848," granted six months' leave by Colonel R. B. Mason, the commander in California, for the benefit of his health, with permission to visit the United States, and was directed to report his arrival in the United States to the Adjutant General, and to report in person to that officer when his health would permit; that it appears that on the 3d of June, 1848, he reported, his arrival, as instructed, by letter from New York, saying that he was in a bad state of health, and that he was then on his way to his home in Wooster, Ohio; that on the 3d of March previous, he was transferred from company G to company F, of said regiment, which company (F) was mustered out of service at Santa Barbara, California, September 8, 1848, and that on the roll of discharge the memorialist is reported "on sick leave, with permission to return to the United States; not joined."

By the President's proclamation of peace with Mexico, promulgated in general orders No. 35, of July 6, 1848, which directed the discharge of the volunteers and of the regular troops raised for the war, and by general orders No. 36, issued the next day, which further directed that all officers belonging to the volunteers and regulars, above referred to, (with a few exceptions of a particular class of officers whose services could not then be dispensed with) who might be absent from their com-



mands, should be considered as discharged from the service of the United States from and after the 20th day of July, 1848, the memorialist's discharge accordingly took effect on that day.

The memorialist, upon being informed by paymaster Leslie of his having been discharged under the provisions of the order referred to, addressed a letter to the Adjutant General to know if such was the case, when that officer informed him by letter dated August 17, 1848, "that under the law and the orders of the War Department he was considered as honorably discharged from the service of the United States on the 20th of July."

By this effect of the order of the President, the memorialist was cut off from the mileage from California home, which every member of the regiment received, and from two months' pay which they also received. It is to obtain the mileage, amounting to \$475, and the two months' pay from the 20th of July to the 18th of September, 1848, amounting to \$101 26, making an aggregate of \$576 26, that the memorialist petitions Congress.

As it appears, from the certificate of First Lieutenant M. K. Stevenson, who commanded the company of volunteers in which the memorialist first enrolled himself, that he did, when in the line of his duty, acting as officer of the guard on board of the troop-ship Thomas H. Perkins, off Cape Horn, contract a violent cold, which resulted in inflammation of the lungs; that previous to his sailing he was a hale and healthy man, and that he was obliged, by the state of his lungs, to leave California, where his regiment was serving, the committee think that as the memorialist, had he not left California, would have been of no service to the regiment, on account of his ill health, and in that case the government would have had to treat him medicinally, at a very great expense, which was defrayed, during the leave, by the memorialist himself, and that as he is now suffering bad health on account of disease contracted in the service of his country, the prayer of the memorialist should be granted, and they accordingly herewith report a bill.

CORNELIUS COFFEY.

[To accompany bill H. R. No. 449.]

JUNE 30, 1854.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the memorial of Cornelius Coffey, have, according to order, had the same under consideration, and submit the following report:*

It appears that the memorialist was enlisted on the 19th of June, 1848, into the army of the United States, at Milwaukie, Wisconsin, by Lieut. E. W. Wright, of the 15th infantry; that the war with Mexico had terminated on the 30th of May previous, but that the news of its termination had not reached Milwaukie at the time of the enlistment of the memorialist; that Lieut. E. W. Wright, acting on orders received on the 13th of June, 1848, offered those who enlisted, (among whom was the memorialist,) as an inducement to enlist, the land bounty and a bounty of \$12 in money; that the said inducements were held out until the latter part of July, a date subsequent to the enlistment of the memorialist, when Lieut. Wright received orders to cease offering those inducements; that the memorialist has received the money bounty, but has been deprived of the land bounty, for the reason that he enlisted after the termination of the Mexican war, and therefore could not have served, actually or constructively, in that war.

The committee think, that as the memorialist enlisted before the news of the termination of the war had reached the place of enlistment, upon inducements held out by the recruiting officer, under orders from the department, which authorized him to promise bounty land to those enlisting, and that as the government cannot restore the memorialist his time, he having served faithfully the period of his enlistment, all the considerations of the said enlistment should be fulfilled.

The committee herewith report a bill.



HEIRS OF JAMES GREER, DECEASED.

[To accompany bill H. R. No. 450.]

JUNE 30, 1854.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the petition of the heirs of James Greer, deceased, report:*

The history of this case is briefly as follows: James Greer, the father of the claimants, was an ingenious and skilful mechanic, employed in the manufacture of guns. While working as a gun-borer in McCormick's shop in Philadelphia, in the year 1797, his attention was drawn to the deficiency of the tools used in his branch of the work, and he set his ingenuity in motion to improve them. Thomas Humes, who worked in the same shop, in his statement, after speaking of the bad quality of the tools, says: "My shop-mate, James Greer, suggested the idea, and immediately set about making one of the following description, which, when completed, to our great satisfaction, answered our most sanguine expectations." Then follows a full description of Greer's nut-boring bitt, a model of which is in the hands of the committee. This tool, or machine, was from that time the only kind used in that establishment.

The manner in which the United States obtained the benefit of this invention is detailed by Dennis O'Byrne, who states, "that having viewed the boring-machine constructed by James Greer at McCormick's factory, near Philadelphia, I made a drawing of the plan of said machine for Mr. Joseph Perkins, then one of the officers (superintendent) of the armory at this place, (Harper's Ferry,) from which a machine was constructed and put into operation in some short time after this armory was established."

From the success attending its use at Harper's Ferry, it was also introduced into the armory at Springfield, at both of which armories it was mainly instrumental in carrying the manufacture of public arms to so high a degree of excellence as made them the very best in use in the war of 1812, in either army.

But the conclusive evidence of original invention on the part of James Greer, deceased, is to be found in the letters patent granted him on the 3d October, 1817, securing to him the exclusive use of his machine from that day till the 3d October, 1831, which should be conclusive, at least on the government. It is true, his right was contested by J. Pettibone, in the circuit court of the United States for the eastern district

of Pennsylvania, in a suit against Henry Derringer, then a contractor for making arms for the United States. A verdict was rendered for the defendant on the 23d May, 1818, after a full trial on its merits, upon the plea of prior invention by James Greer. Derringer, who had worked in McCormick's shop with Greer, knew personally that he was the original inventor.

Soon after the introduction of the nut-boring bitt at Harper's Ferry, Greer himself was employed there as a gun-borer, and continued to reside there until his death, in 1826. During his service in the armory, it appears that his ingenuity was exercised in the invention or improvement of various important tools and machines, greatly to the benefit of the public service, several of which are in use to the present day. For these he received no extra compensation, nor did he ever seek a patent, although entitled to it, for any one of them. His compensation as a workman could not be considered, in any sense, a reward for those improvements, as he received only the ordinary daily pay for work done by him as a gun-borer.

That this invention is of great value is evident. It has supplanted all other machines for boring gun-barrels in this country and in Europe. An English gun-borer, on the 4th June, 1825, makes the following statement. He says: "I have worked at boring for thirty years, and have always worked with square bitts, and I never saw nor knew any other way; my father likewise worked at boring all his lifetime, and always worked with square bitts. I never saw the nut-boring bitt till I came to the United States, which happened in 1821. I never saw it, and I feel confident it is not used in England, either in a public or private establishment, and has not been, either in my time or my father's."

The workmen employed in using the nut-boring bitt are earnest in its recommendation. John Rezor and five other gun-borers, at Harper's Ferry, are of opinion the advantages of this machine over the old plan are as five to one. S. Chambers and three other workmen, at the same place, say the saving in the *expense* of making arms by this machine is very great, but that *that* advantage is exceeded by the superiority in quality, since a barrel only *rough-bored* by this machine is better than one completely *finished* by the old mode. Major Benjamin Moor, formerly a master-armorer at Harper's Ferry and Springfield, says that "it is indispensable" to them. Colonel Stubblefield, who was superintendent at Harper's Ferry from 1807 till 1829, says also that it was "indispensable." So necessary did he consider it to the operations of that armory, that although warned by the inventor, soon after the issue of his patent, not to use his machine until he should be paid for its use, Colonel Stubblefield continued to use it during his whole term of service.

Some prejudice has been created against this claim by the apparent negligence of those interested in it in its prosecution. The committee are aware of the necessity of guarding against fraud in all cases, and that claims are sometimes held back designedly, for the purpose of allowing unfavorable testimony to be extinguished, by the death or removal of those who might expose them. They have accordingly examined this case with strictness, but can find no reason to sustain such a suspicion here. The patentee himself makes oath "that he

delayed his application to obtain letters patent for his boring-machine with a view of making further improvements in the said machine; also to find if any machine of a similar kind was in operation in any country previous to this invention." As soon as he procured his patent, he gave notice to the superintendent at Harper's Ferry, as is stated by Colonel Stubblefield in his deposition, "that he must be paid a fair compensation for the use of said patent, or the armory must cease to use it. That affiant having no power, as superintendent, to make such allowance, he referred him to the government at Washington, and continued to use it, as above mentioned, it being indispensable to the operations of the armory. Affiant further states, that said Greer was, unfortunately, an intemperate man, and very neglectful of his interests; and, as affiant is fully satisfied, never received any compensation for the use of said patent right. And finally, said affiant further states that, in his opinion, his heirs or representatives are justly entitled to a liberal compensation from the government for the use of said patent right."

In pursuance of the superintendent's reference, Greer made application to the Ordnance office in Washington as early as the 7th March, 1819, and, in reply, was referred back to the superintendent. Having thus made application to the executive branch of the government in vain, on the 16th February, 1820, he presented his petition to Congress, and continued to press it till his death, in 1826. After that event his heirs renewed the claim, and with various intermissions, produced by causes generally beyond their control, they have continued to urge it to the present time. No suspicion, then, can attach to it on the ground of delay in its prosecution. The committee, therefore, cannot hesitate to report a bill for the benefit of the claimants.

The only question in their minds is, what shall be the standard of compensation? They are unwilling to fix any precise amount, believing there is an appropriate mode, which has already received the sanction of Congress, in a precisely similar case, by which justice can be done both to the claimants and to the government. In that instance, the Ordnance bureau, by written contract, agreed to pay the patentee one-half of the net amount which the government saved in expense by the use of his machine or improvement, and he conveyed to the bureau the right to use his patent. That contract was carried out, and the Ordnance office ascertained, by its own records, what sum became due to Mr. Blanchard, from time to time, till his patent expired. If nothing was saved, nothing was paid—certainly a safe arrangement for the government; and the committee are of opinion it is a fair arrangement to be applied in the present case. They therefore report a bill for the benefit of the heirs of James Greer, deceased.



JOHN H. KING.

[To accompany bill H. R. No. 451.]

JUNE 30, 1854.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

## REPORT.

*The Committee on Military Affairs, to whom was referred the memorial of John H. King, have, according to order, had the same under consideration, and submit the following report:*

It appears from the evidence that the memorialist was an inspector at the Harper's Ferry armory, in the years 1839 and 1840; that during the latter part of the year 1839, Captain John H. Hall, who was the director of the rifle factory—an office higher than that held by the memorialist—became, by reason of sickness, incapacitated to perform the duties of his position, and that they were performed by the memorialist, as the next officer; that on the 21st of January, 1840, Captain Hall still being sick, the superintendent of the armory, in pursuance of instructions from the Ordnance department, dated January 16, 1840, gave the memorialist a written order to perform the duties of director temporarily, during the respite from labor of Captain Hall; and that the memorialist continued to perform the duties of director, under that order, until after the death of Captain Hall, when the memorialist, on the 10th of June, 1841, received a permanent appointment to the said position.

The memorialist claims the salary of director in addition to that of inspector, for the time that he was performing the duties of the former office, under the order mentioned.

The committee discover it to have been the universal practice of the government, where an officer of a lower grade has been designated temporarily to fill an office of a higher grade, that he should only be allowed the pay of the higher grade; the committee are therefore of the opinion that the memorialist is only entitled to the difference between the salary of the inspector, \$800 per annum, and the salary of the director, \$1,000 per annum, from the 21st of January, 1840, the date of his temporary appointment, to the 10th of June, 1841, the date of his permanent appointment, a period of one year, four months, and twenty days, which difference would amount to \$277 78.

The committee report the accompanying bill.





THEORY OF THE  
EARTH  
AND  
ATMOSPHERE  
BY  
J. H. VAN DER KAM  
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1968

ELEANOR HOOPLE.

[To accompany bill H. R. No. 452.]

JUNE 30, 1854.

R. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the petition of Eleanor Hoople, have, according to order, had the same under consideration, and submit the following report :*

The petitioner states that she is a widow woman, residing on the Canada shore of the St. Lawrence, at a point where a creek called Hoople's creek has its confluence with that river, eleven miles below Chrysler's Farm; that the day before the battle of Chrysler's Farm, the advance of the American army halted in front of the house of her husband; that the Canada militia had just completed the demolition of the ridge across the creek abovenamed, and had taken shelter in an oak scrubby a little north of the road, and within musket range of the elevation upon which the house of the husband of the petitioner stood; that the said militia fired upon the Americans, which caused a skirmish to ensue, in which an American soldier named Daniel Holden was wounded in the knee by a musket-shot, and was brought into the petitioner's house; that the said soldier was of Forsyth's rifles; that two surgeons belonging to the American army came in shortly afterwards, and, after making an unsuccessful attempt to extract the ball, left him, saying "the wagons would take him up;" that no wagons came by the house; the bridge being demolished, the American army diverged from the highway some distance above the house, and crossed the creek at a fording-place a considerable distance in the rear; that the British army passed down shortly after, from which a surgeon came to see the wounded man, who said that it would be impossible to remove him; that from that day to the period of his death, which was on Easter Sunday following, he was kindly taken care of by the family of the petitioner, and that his remains were decently interred by the husband of the petitioner in the Episcopal burial ground, in the vicinity, at his own expense.

The petitioner further states that she is now eighty-four years of age, very poor, and almost blind, and expresses the hope that the government will award her such recompense as Congress may deem just and proper.

The statements set forth in the petition being sustained by the most undoubted testimony adduced before it, the committee submit the accompanying bill.



CHARLES W. CARROLL.

[To accompany bill H. R. No. 454.]

JUNE 30, 1854.

Mr. McDougall, from the Committee on Military Affairs, made the following

R E P O R T.

*The Committee on Military Affairs, to whom was referred the memorial of Charles W. Carroll, praying reimbursement for losses and compensation for damages sustained by reason of his arrest and imprisonment as an alleged deserter from the army of the United States, have had the same under consideration, and report:*

That upon an examination of all the papers presented, they find that, under color of the laws of the United States, officers of the army of the United States, exercising their authority as such, have perpetrated an outrage on the person and liberty of the memorialist, such as is believed to be without parallel in the history of our country, and such as is fit to be compared only with the violent acts of barbarous and despotic power.

The statement of facts can be best understood by referring to a charge given to a jury in the court of Oyer and Terminer of the city of Philadelphia, by Judge King, upon the trial of Sergeant McLean, the principal party to the outrage. The charge is as follows:

“The prosecutor is a young man of much more than ordinary intelligence, and his manner and deportment, under a most severe and searching cross-examination, made a favorable impression on all who heard him. The substance of the story of his wrongs and sufferings, as detailed by him, is the following; and the narrative is substantially taken from his own words:

“Previous to April, 1847, Charles Carroll, the prosecutor, who is a ship-carpenter, a native of Southwark, and Samuel McLean, who then was a recruiting sergeant in the army of the United States, were personally acquainted, having been at one time members of one society. On the day in April, 1847, when the conversation in reference to this affair commenced, Carroll was standing in Second street, Southwark. McLean, the defendant, approached him, saying, ‘I have stopped to tell you that a man of your name enlisted on the fifth of March at the rendezvous in Market street.’ To this Carroll replied, ‘I can’t help that.’ ‘I know you cannot,’ replied McLean; ‘I did not pretend to say it was you, because if you had enlisted I should have known you, and the man that did enlist and who deserted, was an Irishman.’ They

then parted. On the 4th of the ensuing June, about one o'clock, as the prosecutor was going to his work in the ship-yard of the Messrs. Byerly, Kensington, he heard the approach of a hurried step behind him, and turning, saw the prisoner, McLean, who appeared fatigued and excited. Carroll inquired the cause, when McLean said that he had ran all the way from the rendezvous on his account, and asked him if he did not recollect what he had formerly spoken to him about in Second street. Carroll replied in the affirmative. McLean then said that Captain Reynolds and the others at the rendezvous thought that he (Carroll) might be the man, but that he had told them that he knew he was not the man, and that he (McLean) would swear to that effect; that they had sent a police officer to arrest him, and that he had ran off to inform him, so that he might come down and see the captain, who had been present at the enlistment of the deserter, and who would know that he (Carroll) was not the man. Influenced by this apparent friendly interest, he accompanied McLean in order to make the desired explanation.

"On their arriving in Market street, near Broad street, McLean requested him to remain at the Franklin House, until he went to the rendezvous, which he did. On McLean's return he stated that the captain would not be at the rendezvous until four o'clock, and proposed that they should occupy the intermediate time in a walk. Carroll consented, and finally at four o'clock reached the rendezvous with McLean. McLean entered first, and ascended the stairs; the prosecutor followed him. Before he reached the head of the stairs heard McLean call Sergeant Smyth, saying, 'this is the man we were consulting about.' As Carroll entered the room McLean left it, much confused. Smyth then said, 'Ah! you come back again; you don't like this place; I am glad to see you.' Carroll, in reply, said 'that he had never been in the house, and that he had come there to see Captain Reynolds.' Smyth then pointed to a room, telling him he would find Captain Reynolds there. He entered, and the door was immediately closed and locked upon him. He here remained a prisoner until eight o'clock, when he was brought down before Captain Reynolds, who asked him if he had ever enlisted, to which he replied he never had. Captain Reynolds then said he did not think he was the man, and that if he had ever seen him he would have known him. Carroll then inquired if he was at liberty to depart, to which Reynolds replied in the negative, stating there was a man there who asserted positively that he was the man. Carroll then asked to be taken before an alderman, before whom he might be permitted to give bail for his appearance, when he would readily prove his innocence. He was told that if he would then go quietly up stairs, in the morning, at 9 o'clock, the opportunity required by him should be afforded. He returned to the room, a mattress was given to him, and, being fatigued and exhausted, he threw himself upon it and was soon asleep. He was awoke in the morning with the click of the lock of a pair of handcuffs which they were placing on him. Smyth said he had received orders to take him to Governor's island; that he believed he was an innocent man, and that he had never seen him in his life before, but that he must do his duty. In this condition he was marched down to the New York boat, and in his passage met George W. Cain, an acquaintance, to whom he communicated the

circumstances, and requested him to convey the intelligence to his mother, a respectable, aged widow, of Kensington, whose only son and child he is, and with whom he lived. In Chestnut street he met another acquaintance, William H. Treadway, who inquired of Smyth the reason of his being in that state, who said, 'This may be the innocent man—I think he is the innocent man.'

"On board the boat Carroll found Mr. Byerly, his employer, who, naturally astonished at seeing him hand-cuffed and a prisoner, inquired the cause, which Carroll explained. To Mr. Byerly, who went to Smyth to get information on the subject, Smyth observed, I think he is the innocent man, but that he had his duty to perform, and had orders to take him to Governor's island, New York, where he was accordingly conducted. On his arrival there he was placed in a cell about ten by seven feet, the floor of which was laid on the ground, and was cold, damp, and sodden. He remained 35 days in confinement, during which time he was compelled to perform all sorts of menial service. For want of proper changes his clothing became in a most filthy condition; he was covered with vermin, and his body was lacerated with sores from their assaults. Finally he was arraigned and tried, and convicted before a court-martial as a deserter, and on this trial McLean and Smyth both positively swore that he had enlisted and was a deserter, McLean saying he saw him receive the bounty. Before sentence, however, his mother, who had followed her son to New York, caused a writ of habeas corpus to be sued out before Judge Ulshoffer, who, after a full hearing, discharged him from confinement and restored him to that liberty of which he had been so unjustly deprived. At this hearing, McLean and Smyth again repeated the oath they had made before the court-martial. It was on this occasion that another most important fact was elicited. McLean, on his examination before Judge Ulshoffer, stated that he had the check in his pocket for the thirty dollars for arresting Carroll as a deserter.

"Finally Carroll returned home, weak and debilitated from confinement and suffering, and instituted this prosecution, which, from various causes, immaterial to detail, was delayed until the trial before me, which resulted in the conviction of the defendant—justice showing her proverbial slowness, but certainty.

"In many of the details of this history of wrong and outrage, he was sustained by witnesses of unquestioned character.

"His aged and respectable mother, Hannah Morton, who described him as a dutiful and affectionate son, who essentially contributed to her support, was examined; she stated that on the day of the pretended enlistment of her son, he was at home. That on the evening of the 4th of June, the day of his arrest, McLean came to her house and inquired if Charles Carroll lived there. That he appeared (to use her language) 'to have a deathly look on his countenance.' He said that Carroll had requested him to come and let her know that he had gone away. On her inquiring where he had gone, he told her he did not exactly know. She asked him when he had gone; to which he replied, about five o'clock.

"This, it is to be remembered, was false, for at that time her unfortunate son was a prisoner in the rendezvous in Market street. She then

inquired who went with him; to which McLean replied, four or five men, one of whom was in military clothes, and that he, Carroll, seemed much cast down. That he had gone on a boat to New York or Baltimore; which, he could not say. Promising to return in the morning, he left her. In the morning he returned, stating that he had had a great deal of trouble, but could not obtain full particulars, nor tell where he had gone, but that from what he could learn, he had enlisted and deserted. In this conversation he told the mother that 'he knew he was not a deserter.'

"Mrs. Morton then went down to the rendezvous, where she again saw McLean. She asked him for the books, that she might see her son's handwriting. McLean professed his willingness to let her see them; apparently went up stairs for them, but returned, telling her that several persons being there, he could not get them. He again repeated to her that he believed her son had not enlisted, and informed her that he had gone *that morning* at 7 o'clock to New York. She then inquired of him if it would be advisable for her to go on to that city. He replied that it would be of no use; that he was going on to Governor's island himself on Monday. *'That he was going to clear him, and that he (Charles Carroll) should hear him make the oath that he believed him not to be the man; and that he would do more than that—that he would go at his own expense.'* Mrs. Morton then charged him with having made oath that her son was a deserter; to which he replied, 'How could that be, when I know nothing about his being a deserter?' He promised to call and see her again, but never came. On the first morning, at her house, he told her 'that he had met her son and told him to go away, as they were after a man named Carroll, a deserter, and that her son told him that there was no use of his going away, as he was not guilty; that he never had enlisted, and why should he run away?' Mrs. Morton followed her son to New York, where she remained from the 10th of June until the 8th of the ensuing July, when he was released by Judge Ulshoffer, on a writ of habeas corpus. And rarely has that noble writ more worthily performed its office, if this story of wrong and outrage is true, of which the Court entertain no doubt. While at New York, Mrs. Morton from time to time visited her son in his place of confinement. The state of his health, the condition of his clothing and body, were described in her testimony as they had previously been by him.

"The testimony of Mr. Theodore Byerly, the respectable employer of Carroll, proved that Carroll had been so employed from the March previous until his arrest. He also fully sustained Carroll's statement of the interview had by him (Byerly) with Smyth, on board the New York boat, on the morning of the 5th of June. He states he saw him manacled in the custody of Smyth, who, upon inquiring, said to him that 'he knew nothing about the man; that he might be innocent for all he knew, and that he did not believe he was the man.'

"The testimony of William H. Treadway, one of the persons who met Carroll as Smyth was escorting him to the boat, also showed that Smyth said to him 'that Carroll might be the innocent man for all he knew, and that he thought he was innocent.' William H. Stoddell, the attorney who sued out the writ of habeas corpus before Judge Ulshoffer, proved that Smyth and McLean both appeared at the hearing,

and there positively swore that Carroll was the person who enlisted on the 5th of March, 1847. Other witnesses, however, at that hearing, contradicted them, and among these a private soldier named Carson, who swore that he brought the man Carroll to the rendezvous, and received two dollars for so doing; that he knew him personally for five years, and that he was an Irishman.

"John Ritter, grocer, of Kensington, testified that on the 4th of July 1847, and, of course, after Carroll's discharge, he saw McLean in Kensington, and asked him if he had sworn in New York that Carroll was a deserter. To which inquiry McLean answered, 'What! me swear that he was a deserter? No, I swore the very opposite; I swore that he was not a deserter, and made that oath before the court-martial and before the court in New York city.'

"In the proceedings of the court-martial, an exemplification of which was produced before this court, it appears that Smyth and McLean swore positively to the identity of Carroll as the deserter, and it is manifest that the action of the court was essentially induced by their testimony.

"In opposition to this testimony, nothing was adduced in evidence except the proceedings of the court-martial. No attempt was made either to contradict the statements of the witnesses, or to impeach their credibility. The defence rested on the supposed inadequacy of the testimony to prove a criminal combination between McLean and either of the other defendants named in the bill; and the supposed conclusiveness of the judgment of the court-martial, finding Carroll a deserter.

"Of the integrity, honor and pure intention of the court-martial which decided Charles Carroll to have been a deserter, none can entertain a more exalted opinion than the judges of this court. But we are satisfied from the facts in evidence in this case, that, like the judges at the Old Bailey in Kidden's case, the court-martial was deceived by witnesses in whom they had a just right to repose confidence.

"After a very full and careful re-examination of the facts and law of the case, we are unanimously of the opinion that the motion for a new trial should be refused, and that the commonwealth should have judgment on the verdict.

"Sergeant McLean was then sentenced by Judge King to two years' imprisonment in the Eastern Penitentiary, at hard labor."

It appears strange that in our free republic, with so many guards thrown about the rights and persons of our citizens, in the heart of one of our most populous cities, in the name of the law, by virtue of powers conferred by law, so unparalleled an outrage could be successfully perpetrated against an honest, quiet, and unoffending citizen.

It appears the injury to the memorialist did not cease with the injury to his person—the manacles, the disgrace, and the dungeon; bitter wrongs to a young, innocent, and proud man—but in the struggle for his liberty his aged mother impoverished herself; and in appealing to the penal laws for his own vindication, and in the expenses and losses incident, the memorialist has been compelled to sacrifice everything but hope.



An accompanying statement, made under oath, to which reference is made, states the amount of expenditures and losses at over \$6,000.

The question presented is, whether or not the injuries and loss complained of, being caused by the power of the federal government, exercised by her military officers, the case is one that should command the favorable consideration of Congress to such an extent as to afford redress to the party injured.

The case is without a precedent, as it is without a parallel; and this committee are not prepared to say that the memorialist has any strict claim against the government; indeed, the committee are not of opinion that he has such claim. It is true, he has his right of action against the individuals perpetrating the wrong; but it appears that his remedy, in that direction, would be a barren one, as they are irresponsible. When the property of citizens is taken or injured by the government or its officers, government furnishes an indemnity. When government power is exercised against the person, the liberty, the health, and the hopes of a citizen, it does not seem to be a stretch of the equitable powers of Congress to afford him redress. Believing that, not as a matter of strict obligation, but as a matter of substantial justice, Congress should grant relief, the committee report a bill, and recommend its passage.

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FRANCIS M. GWIN.  
[To accompany joint resolution No. 29.]



JUNE 30, 1854.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

## REPORT.

*The Committee on Military Affairs have had under consideration the services rendered to the United States, during the Mexican war, by Francis M. Gwin, of the State of Indiana, and submit the following report :*

That the said Francis M. Gwin, soon after the outbreak of the Mexican war, expressed a desire to join the armies of his country, to aid in the vindication of her national honor ; that he applied to be admitted into Captain Sanderson's company in the Indiana volunteers ; but being at that time hardly fifteen years of age, he could not be mustered into the service, and therefore could not receive any pay or emolument from the United States ; that, undaunted by the disadvantages which on that account would occur to him, he marched to the seat of war with that company, and served in Taylor's line twelve months, during which time he performed gallant services in the battle of Buena Vista ; that on the day of that memorable battle, with musket in hands, doing duty in the ranks, he fell in the rear by a rapid movement, and was run over by the enemy's cavalry, and was left for dead, but soon after sprang up, and, by pushing rapidly forward, again joined the forces ; and that he continued with the command until the expiration of enlistment, and only left when the troops were mustered out of service.

These facts are fully sustained by the accompanying letter of Gen. Joseph Lane, to which especial attention is directed.

The committee look upon this unprecedented action of young Gwin in serving in the armies of his country, without pay or emolument, as eminently worthy of the attention of Congress ; and in order that Congress may show its appreciation of his heroic valor, they recommend the adoption of the accompanying joint resolution.



JOHN COLE.

[To accompany bill H. R. No. 455.]

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JUNE 30, 1854.

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Mr. ROWE, from the Committee on Revolutionary Pensions, made the following

## REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition of John Cole, asking increase of pension, report :*

That he is ninety-three years of age, and unable to work on account of extreme age and a rupture caused by lifting and carrying grape-shot while in the service of the government. He has no other means of support than his pension of five dollars per month.

Your committee, believing his application a meritorious one, respectfully report a bill allowing him eight dollars per month, and unanimously recommend its passage.



GEORGE LYNCH.

[To accompany bill H. R. No. 456.]

JUNE 30, 1854.

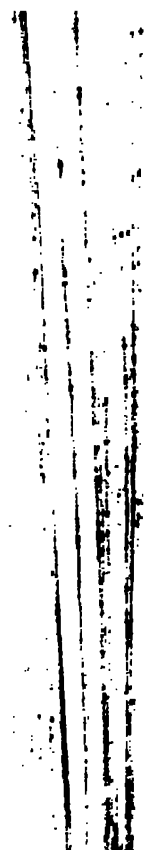
Mr. HENDRICKS, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of George Lynch, of St. Charles county, Missouri, report:*

That Congress, by an act passed in the year 1831, at the instance of said Lynch, granted to him a pension of six dollars a month, for a partial disability incurred by him in the military service of the United States. The said petitioner has exhibited to your committee satisfactory proof of a total disability, which proof was perfected on the 6th day of June, A. D. 1852. They consider his claim for an increase of pension to be a meritorious one, and report a bill to allow him eight dollars a month, in lieu of six dollars a month—said increase to take effect from the 6th day of June, A. D. 1852, the time at which his said proof was perfected.





EVELINA PORTER, WIDOW OF THE LATE COMMODORE  
DAVID PORTER.

[To accompany bill H. R. No. 457.]

JUNE 30, 1854.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the memorial of Evelina Porter, widow of David Porter, deceased, late a captain in the United States navy, praying that her name may be admitted to the navy pension roll, have had the subject under consideration, and respectfully submit the following report:*

The memorialist states that her husband, the said David Porter, entered the navy of the United States in 1798, as a midshipman; that in the old Tripolitan war (1803) he received a wound, which, with the effects of a severe attack of the yellow fever, contracted while in command of the United States squadron for the suppression of piracy in the West India seas, was the cause of his death; that, believing the act of Congress of 30th of June, 1834, designed to confer its benefits on the widows of those who had faithfully served their country, and who had died under the circumstances therein stated, she applied to the Commissioner of Pensions to be placed on the navy pension roll; that officer decided that she was not entitled to the benefits of the act in question, because her husband at the time of his death was not an officer of the navy.

Under these circumstances, she appeals to Congress, and prays the passage of an act for her benefit, granting her a pension, commencing at the date of her said husband's death, in a similar manner and at the same rate with the widows of officers of her husband's rank who are now upon said navy pension roll, whose husbands died before they left the naval service.

In support of her claim, Dr. Edmund L. Du Barre certifies that he was attached to the squadron commanded by Commodore David Porter, in the West Indies, for the suppression of piracy; that said Porter contracted in 1823 a violent attack of the yellow fever; his life was despaired of; his system was totally unable to react; he had received many severe wounds in the service; the yellow fever re-opened old wounds, and his left cavish, which had been wounded many years before, suppurated, and pieces of bone exfoliated; saw him again in 1824-'5; his health was then precarious; his stomach, liver, and bowels very much deranged; having lived in the cabin of the "Sea Gull" with him, had ample opportunity of observing the condition of his system; was a constant witness to his intense sufferings; saw him again in 1838 or '9; saw the breaking up of his physical powers rapidly advancing. The

account of his death is consistent with his view of the case from the beginning. The wound on the scrotum, deranging the urinary organs and obstructing the functions of the bladder, of itself was serious; but attended with an almost total paralysis of the action of the parts, death was a most certain result. That his death is wholly attributable to wounds received and disease contracted in the service, in the actual performance of his duties, he has not the slightest doubt.

G. H. Heap certifies that he resided with Commodore David Porter for nine months previous to his death, in constant attendance upon him during his last illness up to his death, on the 3d of March, 1843. His death was caused in a great measure by a disorder of the bladder from a wound produced by a ball, which injured the relative parts. During his last illness it was often necessary to lift him out of bed twenty times a night, and to use the catheter before relieved. Has no doubt his death was caused by wounds and sickness received in his country's service by the obstruction of the urethra by the aforesaid wound, aggravated by other injuries, and especially the attack of yellow fever above referred to.

George A. Porter certifies that he was a nephew of Commodore David Porter; was with him from 1830 to the day of his death, March 3, 1843; resided with him the whole time he lived at Constantinople; attended him during his illness, and was present when he died. His premature death was attributed, by all who were intimately acquainted with him, to the zealous discharge of his duties in the naval service.

C. W. Goldsborough, secretary of the navy commissioners, states that Commodore Porter has rendered not only long and faithful, but extraordinary services, as the record of the Navy Department will fully testify. In February, 1798, he was a midshipman on board the frigate *Constellation*; in 1800 was promoted to first lieutenant of the *Experiment*. That in an engagement off old Tripoli, by a detachment of the vessels of the squadron under command of Commodore R. V. Morris, at that time commanded by Lieutenant Porter, as the boats approached, several of our men were killed and wounded, among the latter Lieut. Porter, who received a slight wound in the right thigh, and a ball through the left. Commodore Morris reported Lieut. David Porter and others as deserving particular distinction on the occasion.

John Downes, a captain in the United States navy, states that in 1799 or 1800 he was a boy on the frigate *Constellation*, in the West Indies, when Commodore Porter, then quite a youth, commanded a small schooner, pursued an enemy's vessel of superior force into shoal water, and captured her after a sharp action. He witnessed his gallant attack on the enemy's vessels with a detachment of boats under his command from the United States squadron at old Tripoli in 1803. In this attack he was wounded through the thigh; all the enemy's vessels were set on fire. Commodore Porter was in several actions in the West Indies during our war with France in 1799 and 1800, and in one of them was wounded in the shoulder; has known him intimately since 1802; was his first lieutenant on the *Essex* during the whole time he commanded her; does not believe any country can boast of his superior as a naval commander; no man has done more to build up the reputation of the navy.

F. A. Thornton says, that in December, 1822, he was purser of the piratical expedition for the West Indies, under Commodore David Porter; continued with him till his return in the fall or winter of 1824 or 1825. While in this service, said Porter suffered from severe attacks of yellow fever, &c.

Joshua Blake, a captain in the navy, says he was second lieutenant of the schooner *Experiment*, then in command of Lieutenant Maley; that Commodore David Porter was then first lieutenant of said schooner. On the 1st of January, 1800, they had an engagement of some hours with several brigand barges. During the action, which part of the time was close and severe, Commodore (then Lieutenant) Porter received a wound in the left shoulder. He distinctly recollects he suffered much from the effects of the contusion.

Memorialist's marriage with said David Porter is proven by the statements of Rebecca S. Connell and Mary Davenport, who were present at their marriage, which, together with her own statement, under oath, fixes the date of their marriage on the 9th day of March, 1808, at the residence of her father, in the town of Chester, Pennsylvania.

From the testimony above referred to, it appears that Commodore David Porter's death is wholly attributable to wounds and injuries received and disease contracted by him while in his country's service and in the discharge of his duties; that his death occurred at Constantinople, in Turkey, on the 3d of March, 1843, at which place he was at the time a diplomatic functionary of the government, and not in the naval service of the United States.

The act of June 30, 1834, by virtue of which Mrs. Porter made her application for a pension at the Pension Office, as the widow of said David Porter, extends for another term of five years the pensions of "all those widows who have heretofore had the benefits of the same; and the same is also extended to the widows of officers, seamen, and marines who have died in the naval service since the first of January, 1824, or who may die in said service by reason of disease contracted or of casualties by drowning or otherwise, or of injuries received, while in the line of their duty," &c. (See 4 Statutes at Large, 714.)

This act, and all preceding as well as all subsequent and continuing acts, including the acts of March 3, 1845, March 3, 1847, and that of August 11, 1848, (in which all the acts granting navy pensions to widows are merged, and pensions granted for life or during widowhood,) are now construed by the department to embrace none but those whose husbands die in the naval service of wounds, &c., received by them while in the line of duty.

Such is the construction given to those acts by Attorney General Butler, in his opinion of July 10, 1838, (see 3 Opinions of Attorneys General, page 338;) although he says: "I confess I see no great justice in such restriction."

Memorialist's claim is therefore established by indisputable testimony, in conformity with the rules of the department, under the provisions of existing acts of Congress, with the exception of the single fact that said David Porter did not die in the naval service; and your committee have accompanied this report with a bill for her relief.



JOSEPH WEBB.

[To accompany bill H. R. No. 458.]

JUNE 30, 1854.

is, from the Committee on Invalid Pensions, made the following

REPORT.

*Committee on Invalid Pensions, to whom was referred the petition of Webb, of the county of Penobscot, in the State of Maine, have had the same under consideration, and report :*

by a special act of Congress of the 25th of June, 1834, the said Webb was placed on the list of invalid pensioners of the United States, on account of disability arising from a wound received while in the service of the United States, and in the line of his duty, during the war of 1812. The rate of six dollars per month, which rate was fixed in consequence of the certificate of surgeons that his disability was three-fourths of a total disability. The said Webb further represents that his disability arising from the aforesaid wound has been for many years increased as to amount to a total disability; and that, on the 1st of April, 1851, he submitted himself to the examination of two surgeons, John Mason and W. H. Brown, who thereupon gave a certificate, in due form, that the said Webb's disability, arising from the said wound, was a total disability, and that, in their opinion, he was entitled to a full pension of eight dollars per month, instead of six—the said Webb has been drawing under his existing pension certificate. The committee, therefore, report a bill increasing the pension of the said Webb to eight dollars per month, from and after the 1st day of April, 1852.



JOHN STEENE.

[To accompany bill H. R. No. 459.]

JUNE 30, 1854.

Mr. SAGE, from the Committee on Invalid Pensions, made the following  
**REPORT.**

*The Committee on Invalid Pensions, to whom was referred the petition of John Steene, an applicant for an invalid pension, beg leave to report:*

That said Steene enlisted on the 16th of February, 1813, for the term of five years, and was honorably discharged from the military service of the United States September 2, 1818.

It appears, to the satisfaction of your committee, that John Steene was seriously disabled while in the service of the United States, and that that disability continues to so great an extent as to make him unable to obtain a living. These facts are shown by the depositions of George White, a fellow-soldier, and two respectable physicians. John Steene is very old and poor, and the committee report the accompanying bill for his relief.





GEORGE ELLIOTT.

[To accompany bill H. R. No. 460.]

JUNE 30, 1854.

Mr. SAGE, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of George Elliott, asking an increase of pension, report :*

That by a special act of Congress passed on the 19th day of August, A. D. 1836, a pension of six dollars a month was granted to said Elliott for a disability of three-fourths, resulting from wounds received while in the line of his duty in the battle of Fort Meigs. Your committee state that said Elliott, in support of his petition, has furnished satisfactory proof that his disability from said cause is total—said proof perfected January the first, 1852—from which time they report a bill to grant him a pension of eight dollars a month instead of six dollars a month



MARY RUTHERFORD, WIDOW OF SAMUEL RUTHERFORD.

[To accompany bill H. R. No. 461.]

JUNE 30, 1854.

Mr. SAGE, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of Mary Rutherford, widow of Samuel Rutherford, of Jefferson city, in the State of Missouri, beg leave to report :*

That Samuel Rutherford enlisted during the war of 1812, in the 7th regiment of infantry, from the State of Tennessee, where he then resided, and was discharged at New Orleans on the 8th of April, 1815, as appears by the records in the Pension Office. By the affidavit of said Mary Rutherford, it appears her husband contracted a disease while in the service, some time before his discharge, as she was informed by him, and other fellow-soldiers who served with him, and who knew him well in said war; and that he was so ill that he was not able, and could not have reached his home without assistance. That they continued to reside in Tennessee after his return, until the fall of 1819, when they started to move to the State of Missouri, where he has located his bounty land, under land warrant issued to him, No. 8625, for 160 acres; but that on his way to said State of Missouri, on the 24th day of October, 1819, he died, and she, with her children, continued their journey to said State aforesaid. It appears further, by said affidavit, that her husband was never able to do a day's labor from the day of his discharge to the day of his death, and that by the lapse of time she is unable to procure the testimony of those who served in the war with him, and therefore trusts to the aforementioned facts, and the testimonials of her good character, which embrace nearly every State and United States officer residing in said State of Missouri, who represent said widow Rutherford as being an aged and highly respectable woman, of forty years' standing in the Presbyterian church; and that, by great industry, she has been enabled to support herself and children to the present time, but that now, old age and infirmity compel her to depend upon the charity of her neighbors for her livelihood.

With these facts, your committee report the accompanying bill, allowing her a half pension of \$4 per month for the period of five years, and recommend its passage.



**WARREN RAYMOND.**  
[To accompany bill H. R. No. 462.]

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**JUNE 30, 1864.**

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**Mr. SAGE, from the Committee on Invalid Pensions, made the following**  
**REPORT.**

*The Committee on Invalid Pensions, to whom was referred the petition of Warren Raymond report :*

That they find the facts in this case correctly stated in the report of the Committee on Invalid Pensions of the 30th and 31st Congress. The committee therefore adopt the said reports :

**MARCH 13, 1860.**

*The Committee on Invalid Pensions, to whom were referred the petition and papers of Warren Raymond, report :*

The committee adopt the report made by Mr. William T. Lawrence, from the Committee on Invalid Pensions at the first session of the 30th Congress, (report No. 555,) inasmuch as the bill introduced by such report passed the House of Representatives, was sent to the Senate, reported favorably upon by the committee to whom it was referred, and only lost on its passage for want of time.

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*The Committee on Invalid Pensions, to whom was referred the petition of Warren Raymond, beg leave to report :*

That your petitioner was a private in the militia of the State of New York, in the service of the United States, during the war with Great Britain, and was for a term, from about the middle of September till about the 1st of November, 1814, stationed at or near Sackett's Harbor, under Nicholas N. Weaver, lieutenant commandant of a company in the 134th New York regiment, Colonel Stone commanding, and Brigadier General Oliver Collins; that, while there, owing to want of tents, &c., the corps encountered great exposure, which occasioned much sickness in the camp; and your petitioner contracted a disease which resulted in a catarrhal affection in the head, which continues to this day, greatly injuring his constitution, which was before this service good, but has ever since been feeble; and he is now in a great degree disabled from

obtaining a subsistence by manual labor. His good health previous to his service, and the reverse since, is fully substantiated by the affidavits of persons knowing him before and to this time, and by persons who served with him; his service and his sickness while on duty, with the cause of that sickness, (viz: exposure, &c.,) are proven by the commandant of his company, and by the acting quartermaster of his regiment; and his condition now is proven by the affidavits of A. Blair, surgeon of the United States arsenal at Rome, and of Charles Babcock, who was surgeon of the 134th regiment, (and to which your petitioner belonged at that time, namely, 1814,) who declare his disease a catarrhal affection of the head, occasioned by the aforesaid exposures, which continues to this day, and will, in all probability, through life, and that he is thereby disabled one-half from obtaining his subsistence by manual labor. Your committee, deeming the petitioner a proper subject for the bounty of the country, have brought in a bill for his relief.

INVALID PENSIONS—TO EXTEND THE LAWS.

[To accompany bill H. R. No. 169.]

JUNE 30, 1854.—Laid on the table, and ordered to be printed.

Mr. VAIL, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred House bill No. 169, having had the same under consideration, respectfully report:*

This bill provides that all invalid pensions shall be estimated according to existing laws; it would therefore increase all pensions granted prior to April 24, 1816. From June 7, 1785, to April 24, 1816, and from April 24, 1816, to the present time, commissioned officers, non-commissioned officers, and privates have been paid according to the following rates:

First lieutenant, full pension, before April 24, 1816, \$13 34; since then, \$17 per month.

Second lieutenant, full pension, before April 24, 1816, \$13 34; since then, \$15 per month.

Third lieutenant, full pension, before April 24, 1816, \$13 34; since then, \$14 per month.

Ensign, full pension, before April 24, 1816, \$10; since then, \$13 per month.

Non-commissioned officers and privates, full pension, before April 24, 1816, \$5; since then, \$8 per month.

Invalid pensions are now made to commence on the day of completing the evidence in the applications respectively. This bill makes the pension commence from the disability in all cases; therefore, if the bill should become a law, arrearages of pension would be given in nearly every case that has ever been admitted, and in very many for upwards of forty years. The whole number now on the invalid list is 5,347. This number, however, embraces but a small portion of those who would be affected by the operation of the bill, inasmuch as the heirs of all who have died would be entitled to the benefit of its provisions, as well as those who may hereafter be admitted. The words of the bill are, "The pensions which may have been granted or which may hereafter be granted." This provision, therefore, includes every invalid pension that may have been granted since the government was established. The bill provides, also, that the arrearages be paid, first, to the widow; second, to the children; third, to the next of kin. The effect of this provision is, in all cases of deceased invalid pensioners, to give *gratuities* to their children, their brothers' and sisters' children,



their uncles' and aunts', or even the children of a still more remote relative. To extend the gratuity named to the persons indicated, would be highly improper and unjust. Should this bill become a law, a new and dangerous principle would be introduced into the whole pension system. It has never been the policy of this government to give gratuities to any other class of persons than those who rendered meritorious service for the country, or were disabled therein, and those who shared in the toils and privations consequent upon such service or disability. A pension is a *personal* bounty; therefore it should always cease upon the death of the pensioner. By this bill, however, Congress is asked not only to extend these gratuities to the children, but to persons who are "the next of kin," and who may not be heirs-at-law of the person on account of whose disability the gratuity is given. Should this principle be recognised and sanctioned by congressional legislation, the committee do not see any reason why the children, grandchildren, or the next of kin, of those soldiers who died before the passage of any of the general pension laws by which they would be entitled, if living, for services in the army of the Revolution, should not receive the benefit of those laws, and, as a consequence, the gratuities intended for the *personal* support and comfort of the aged and infirm soldier be extended to his children, grandchildren, or next of kin—a consequence which it is hoped Congress will never sanction. Should a law be passed similar to the one contemplated by this bill, the committee are of the opinion that, for the purpose of making the legislation uniform upon the subject of pensions, and placing the different class of claimants upon an equitable footing, Congress will be required to provide that all pensions which have been or may hereafter be granted under any of the general or special pension laws for *services*, may commence at the time the service was rendered for which the pension is or may be granted, and thus introduce a principle into the legislation of the country fraught with the most grave consequences to the government. The public moneys required by the operation of this bill (which would amount to many millions) would in most instances go to persons who never rendered any military or naval service to the United States, or who were never disabled in such service, and who are very distantly, if at all, connected by consanguinity with those who did.

The execution of such a law as this bill contemplates would be next to impossible. Independent, however, of the difficulty of its execution, it would encourage fraud and corruption. The difficulties in discovering the next of kin in the different places where the pensioner or soldier may have resided, would be manifold. The expense to the government in carrying the law into effect would be enormous, and the increased burden upon the treasury would be most overwhelming.

For these reasons, and others which very readily suggest themselves to the mind, the committee are of the opinion that the said bill ought not to pass. They therefore recommend that it be laid upon the table.

**ROBERT BABCOCK.**

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**JUNE 30, 1854.**—Laid on the table, and ordered to be printed.

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**Mr. ROWE**, from the Committee on Revolutionary Pensions, made the following

**REPORT.**

*The Committee on Revolutionary Pensions, to whom was referred the petition of Robert Babcock, asking for a pension, report :*

That the Commissioner of Pensions has refused the application of said Babcock for want of proof of service; there is no further proof before your committee, and therefore they report adverse to the prayer of the petitioner.



BETSY A. FAULKNER, DAUGHTER OF EBENEZER FLOYD.

JUNE 30, 1854.—Laid upon the table, and ordered to be printed.

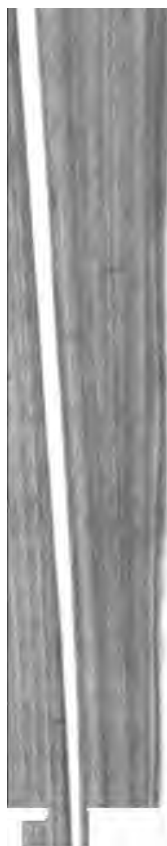
Mr. ROWE, from the Committee on Revolutionary Pensions, made the following

REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition of Betsy A. Faulkner, asking for the passage of a special law for compensation for services of her father during the revolutionary war, report:*

That he was a regularly enlisted soldier; that he received his pay and bounty land in full, but he died before the passage of any law granting pensions.

Your committee are unwilling to establish a precedent that would bring with it innumerable applications of the same kind, and therefore report adverse to the prayer of the petitioner.



BETHIAH BLACK.

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JUNE 30, 1854.—Laid upon the table, and ordered to be printed.

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Mr. ROWE, from the Committee on Revolutionary Pensions, made the following

REPORT.

*The Committee on Revolutionary Pensions, to whom was referred the petition of Bethiah Black, asking such pension or allowance as her mother would have received, had she lived until the passage of the act of July 4, 1836, report:*

That said petition is not sworn to, and is unaccompanied by any proof corroborating the statements therein set forth; and that if the petition were duly authenticated, the passage of such an act would open the door to other and like petitions, for which there is no precedent.

Your committee therefore respectfully report adverse to the prayer of the petitioner.













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